

The marketing of electronic cigarettes: CAP and BCAP's evaluation of responses



1. Introduction

The Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP), are implementing new rules in their respective Codes for the marketing of electronic cigarettes, following a period of consultation. The Committees have published the new sections of both Codes and a separate Regulatory Statement setting out their rationale for key decisions. This document provides more detailed responses on specific comments received in relation to each proposed rule and question.

1.1 How to use this document

This document should be read alongside the original consultation document, which can be found [here](#). The content and layout of the final rules has naturally changed since they were proposed in that document.

1.2 Nature of responses

A large number of responses either endorsed or replicated the submission made by Action on Smoking and Health (ASH) either in whole or part. Others used it as a template before adding additional comments. Where an organisation has separately contacted B/CAP to provide a copy of, or completely endorse, the response of another organisation, that response is counted separately in the table below. Some organisations submitted joint responses; those are indicated in the table below and counted together.

B/CAP have separately published the non-confidential responses to the consultation.

1.3 The WHO Framework on Tobacco Control

Consistent with the guidance given in the WHO Framework on Tobacco Control, those respondents who B/CAP understands are either tobacco companies, their partners or their subsidiaries are indicated in **bold and underlined** text in the below table.

2. List of respondents and their abbreviations used in this document

	Individuals	Abbreviation
1	Mr E. - an individual	Mr E.
2	Mr H. - an individual	Mr H.
3	Mr S. - an individual	Mr S.
4	Mr S(2) - an individual	Mr S(2)
5	Mr S(3) - an individual	Mr S(3)
6	Mr W. - an individual	Mr W.
7	Ms. B – an individual	Ms. B
8	Ms C. - an individual	Ms C.
9	Ms H. - an individual	Ms H.
10	Ms M. - an individual	Ms M.
11	Ms. R - an individual	Ms R.
12	Professor Gerry V. Stimson: A public health social scientist	Prof GS
13	A behavioural psychotherapist and hypnotherapist, working in private practice	Mr B.
14	An honorary consultant physician, responding in a personal capacity	Dr C.

	Organisations	Abbreviation
15	A coalition of e-cigarette companies comprising: Jasper & Jasper, Multicig, Nicoventures , NJOY Electronic Cigarettes, Cygnnet UK Trading Limited t/a blu ecigs (UK) , Ten Motives, Vapestick, Must Have Limited VIP Electronic Cigarettes, Zandera/E-Lites	“A coalition of e-cigarette companies”
16	Action on Smoking and Health	ASH

17	An organisation requesting confidentiality	Org.A.
18	ASH Scotland	ASH Scot.
19	ASH Wales	ASH W.
20	Association of Directors of Public Health	ADPH
21	Association of Respiratory Nurse Specialists	ARNS
22	Boots UK	Boots
23	British Heart Foundation	ASH-W
24	British Lung Foundation	BLF
25	British Medical Association	BMA
26	Broxtowe Borough Council	BrBC
27	Cambridgeshire County Council	CCC
28	Cancer Focus Northern Ireland	CFNI
29	Cancer Research UK	CRUK
30	Central England Trading Standards Authorities	CEntSA
31	Chartered Institute of Environmental Health	CIEH
32	Cheshire and Merseyside Tobacco Alliance	CMTA
33	Chief Medical Officer (Department of Health)	CMO (DoH)
34	Children in Scotland	CIS
35	Cinema Advertising Association (responding to the CAP element of the consultation only)	CAA
36	Counterfactual Consulting Ltd	Counterfactual
37	<u>Cygnnet UK Trading Limited t/a blu ecigs (UK)</u>	Cygnnet
38	Doncaster Tobacco Control Alliance	DTCA
39	Electronic Cigarette Industry Trade Association (responding on behalf of their members and additional signatories)	ECITA
40	European Healthy Stadia Network	Healthy Stadia
41	Faculty of Public Health	FPH
42	<u>Fontem Ventures</u>	Fontem

43	GlaxoSmithKline	GSK
44	Hartlepool Smokefree Alliance	HSA
45	Health and Safety Executive	HSE
46	Heart of Mersey	HOM
47	Hertfordshire Tobacco Control Strategy Group	HTCSG
48	Hull Alliance on Tobacco	HAT
49	Institute of Practitioners in Advertising	IPA
50	Johnson & Johnson Ltd	J&J
51	Lancashire Care Foundation Trust	LCFT
52	Lancashire County Council	LCC
53	Leicester Stop Smoking Service	Leicester Stop Smoking Service
54	London Trading Standards Association	LOTSA
55	Manchester Stop Smoking Service	MSSS
56	Medicines and Healthcare Products Regulatory Agency	MHRA
57	New Nicotine Alliance	NNA
58	NHS Grampian	NHS Grampian
59	NHS Lanarkshire	NHS Lanarkshire
60	<u>Nicoventures</u>	Nicoventures
61	North East Lincolnshire Smokefree Alliance	NELSA
62	Nottinghamshire Strategic Tobacco Alliance Group	NSTAG
63	Pharmacy Voice	PV
64	<u>Philip Morris Limited</u>	PML
65	Public Health England	PHE
66	Public Health Suffolk	PHS
67	RadioCentre and Radio Advertising Clearance Centre (<i>joint response</i>)	RC&RACC
68	Rotherham Tobacco Control Alliance	RTCA
69	Rowlands – Rowlands Pharmacy	Rowlands
70	Royal College of Paediatrics and Child Health	RCPCH

71	Royal College of Physicians & UK Centre for Tobacco and Alcohol Studies (<i>joint response</i>)	RCP&UKCTAS
72	Royal College of Physicians in Edinburgh	RCPE (endorsed the SCOT response – to be added below)
73	Royal College of Radiologists	RCR
74	Royal Pharmaceutical Society	RPS
75	Royal Society for Public Health	RSPH
76	Sandwell Metropolitan Borough Council	Sandwell Metropolitan Borough Council
77	Save E-cigs Campaign	SEC
78	Scottish Coalition on Tobacco	SCOT
79	Scottish Government	SG
80	Sefton Health and Wellbeing Board	SHWB
81	Sheffield Tobacco Control Programme Accountable Board	STCPAB
82	Shropshire Public Health	SPH
83	Smoke Free Newcastle	SFN
84	Smokefree County Durham Tobacco Control Alliance	SFCDTCA
85	Smokefree Northumberland Alliance	SFNA
86	Smokefree South West	SFSW
87	South East London Illegal Tobacco Network	SELITN
88	Swindon Smokefree Alliance	SSA
89	The International Coalition Against Prohibition	TICAP
90	The Proprietary Association of Great Britain	PAGB
91	Thurrock Council	TC
92	Tobacco Control Research Group (University of Edinburgh)	TCRG
93	Tobacco Free Futures	TFF
94	Totally Wicked E-cigarettes	TW
95	Trading Standards Institute	TSI
96	Trading Standards North West	TSNW
97	UK Health Forum	UKHF

98	University of Stirling (Institute for Social Marketing)	UOS
99	Welsh Government	WG
100	Welsh Heads of Trading Standards	WHOT
101	West Sussex County Council	WSCC
102	Wiltshire Stop Smoking Service	WSSS
103	<u>Zandera Ltd t/a E-Lites</u>	Zandera

Rule 1: Marketing communications / advertisements for e-cigarettes must be socially responsible.

1. Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.		
2. What specific advertising approaches, if any, that are not covered by the following rules do you consider might be identified as problematic within the wording of the rule?		
1.1	<p>Respondent making comments on the proposal:</p> <p>ASH, Boots UK, CRUK, Nicoventures, CMTA, DTCA, HSA, Org.A., MSSS, NELSA, GSK, SEC, PAGB, Fontem, IPA, CEnTSA, NHS Lanarkshire, HOM, Dr. C., SELITN, Rowlands, LOTSА, Zandera, RSPH, CIEH, WSSS, TC</p>	<p>CAP and BCAP's (B/CAP's) evaluation:</p> <p>B/CAP agree and are implementing the rule as drafted. B/CAP will issue guidance as ASA casework develops</p>
1.2	<p>ASH, BLF, CMTA, HSA, SSA, ASH Scot, ASH-W, RCPCH, ADPH, ARNS, BHF, CCC, CFNI, RCP&UKCTAS, SCOT, CIS, TSI, SPH, HOM, PHE, HAT, HTCSG, RPS, SFNA, SFN, SFSW,</p>	<p>Consider that all the rules should apply to all nicotine containing products (NCPs) and that this should be made clear in this rule and in all subsequent rules which refer to the product within their wording.</p> <p>B/CAP agree. The rules will apply to all e-cigarettes and similar products, such as e-shisha and e-hookah products.</p>

	SFCDTCA, TCRG, WHOTS		
1.3	ADPH, ASH, ASH Scot, BLF, CRUK, FPH, Healthy Stadia, NHS Grampian, SSA, ASH-W, RTCA, BrBC, CCC, CFNI, SCOT, CIS, LCC, TSI, SPH, PV, PHE, TFF, HAT, HTCSG, SG, SFNA, SFN, PHS, NSTAG, SHWB, SFSW, SFCDTCA, TCRG, WHOT, Mr B., STCPAB, RSPH, CIEH, WSSS, TC	Agree in principle but consider tighter wording is needed. Specifically, explicit reference to the fact that electronic cigarettes and other nicotine containing products are an alternative to tobacco, and that they are therefore not suitable for use by people who do not currently consume tobacco products.	B/CAP disagree. B/CAP are mindful that these products have a primary appeal to those looking for an alternative to smoking but it is not B/CAP's role to dictate their proper use, nor are they aware of an evidential basis which requires mandating ads to be addressed only to existing smokers / nicotine users in all instances. In the absence of that B/CAP consider it disproportionate to mandate this type of presentation in all advertising, but have provided a separate rule which prevents advertising which addresses non-smokers explicitly. Additionally, B/CAP have yet to be persuaded of the value of compulsory messages in advertising. This is discussed in more detail in the evaluation of proposed rule 11, below.
1.4	ASH- W	Electronic cigarettes should not be presented in a manner that suggests they are suitable for people who do not currently use electronic cigarettes No use of wording that suggests the use of electronic cigarettes (or other nicotine containing products) has positive qualities or reinforces the idea that the product has positive qualities among consumers. This is due to the addictive nature of the product, and also the fact that we currently have no evidence on the long-term consequences of electronic cigarette use;	See 1.3 See 1.9
1.5	TSNW	Agree. There should be no suggestion that consumption of e-cigarettes has any positive benefits except very specifically to those smokers who use e-cigarettes to support their attempts to use less or no regular cigarettes	See 1.3 and 6.62
1.6	RCP&UKCTAS	Agree with the principle but the rule needs to be explicit in stating that marketing should be aimed only at current or former cigarette smokers. Advertising should therefore be designed as far as is possible to target and inform only the population of current smokers, or former smokers who are still using nicotine.	See 1.3 and 6.62

1.7	Scot, CIS	The rule should prohibit any suggestion that using e-cigarettes has positive qualities as a 'lifestyle choice' other than as an alternative to tobacco cigarettes for existing smokers. This is important for descriptions of perceived user effects that exist largely as a consequence of nicotine dependence (e.g. terms like 'satisfying' should not be permitted).	See 1.3 and 6.62
1.8	NHS Lanarkshire	Concerned about e-cigarettes simulating and normalising smoking behaviours. Ads should therefore not to be allowed to show people "vaping" with the resultant vapour being shown emitting from this product as this might be association appeal to ex-smokers or even to never smokers.	See 2.6
1.9	J&J	<p>Ads should only be targeted to smokers. There should be included a legal superscript to this effect, e.g. "only for existing/established smokers".</p> <p>There should be no normalisation or glamorisation of nicotine as it may encourage take-up but non-smokers or former smokers. The rule should prohibit promotion / endorsement by celebrities,</p> <p>Should prohibit an implication that e-cigarettes can contribute to an individual's popularity or confidence nor imply that e-cigarettes can enhance personal qualities. Advertisements must not imply that the use of e-cigarettes is a key component of social success or acceptance or that refusal is a sign of weakness. Advertisements must not imply that the success of a social occasion depends on the presence or use of e-cigarettes. Advertisements must not link e-cigarettes with sexual activity, sexual success or seduction or imply that e-cigarettes can enhance attractiveness. That does not preclude linking e-cigarettes with romance or flirtation. Advertisements must not portray e-cigarettes as indispensable or as taking priority in life. Advertisements must not imply that vaping can overcome problems.</p> <p>Due to similarity with cigarettes, e-cigarettes must not be featured in movies, TV series, video games, music videos on live shows/celebrity chat shows as a product placement. Exposure to smoking in entertainment media is associated with increased smoking and favourable attitudes towards tobacco use among adolescents.</p>	<p>See 1.3</p> <p>B/CAP disagree. B/CAP note that various consultation respondents consider that a ban on glamorous creative approaches is required. However, B/CAP also wish to set proportionate rules which allow marketers to use varied and creative approaches so long as those approaches are not addressed to non-smokers, likely to be of particular appeal to children and young people and are not harmful, offensive or otherwise irresponsible.</p> <p>B/CAP note these suggestions, which mirror rules provided for alcohol and gambling. Although B/CAP have looked to the alcohol rules as a template when proposing some rules for e-cigarettes, the committees do not seek to copy them verbatim. E-cigarettes present only some of the same concerns as alcohol and gambling and, crucially there are strong arguments for the public health benefits of e-cigarettes.</p> <p>B/CAP do not have a regulatory role in relation to the content of feature films, television programming or video games. Depending on the media the relevant bodies are likely to be The Cinema Advertising Association (CAA), The Office of Communications (Ofcom) and the Video Standards Council (VSC).</p>

		<p>The use of an e-cigarette should not be described as smoking in adverts and/or on packaging as it is not smoking. This can be replaced by “vaping” or similar..</p> <p>The rule should prohibit promotion / endorsement by, healthcare professionals</p>	<p>See 1.23 and 4.2. B/CAP do not have responsibility for claims on product packaging, except where packaging is visible in advertising.</p> <p>B/CAP agree and have provided a separate rule for this purpose.</p>
1.10	PHE	<p>Agree. In order to fulfil this fundamental principle, NCPs should not be advertised or promoted in a way that appeals to young people or to non-smokers.</p> <p>NCPs should be clearly positioned as an alternative to smoking, to support people in quitting or cutting down. In the view of PHE, the use of NCPs as a replacement for smoking or to reduce the harm from secondhand smoke is both socially responsible and consistent with the rational use of the product.</p>	<p>B/CAP agree and have provided separate rules for this purpose.</p> <p>See 1.3, however ads must not claim that a product can be used for smoking cessation or reduction unless the product is licensed by the MHRA.</p>
1.11	DCTA	<p>Agree. E-cigs should not be associated with any desirable lifestyle that may encourage young people to take them up.</p>	<p>See 1.9.</p>
1.12	NELSA	<p>Concerned that advertisers might create an image for e-cigarettes that suggests that they are cool or sophisticated with the aim of drawing in non-smokers.</p>	<p>See 1.9</p>
1.13	ASH Scot	<p>Recommend prohibition on any feature of the communication/advertisement that undermines the message that quitting smoking is the best option to improve health</p> <p>Recommend prohibition of the promotion the use of e-cigarettes alongside continuing use of tobacco cigarettes ('dual use').</p>	<p>B/CAP agree and have amended final rule 5, for that purpose.</p> <p>B/CAP considers that it is acceptable for marketers to continue to refer to their product as an alternative to tobacco, particularly given that they cannot claim or imply smoking reduction or cessation. Marketers will however need to exercise caution to ensure that ads do not promote the use of tobacco, in line with finalised rules 2 and 3.</p>
1.14	RPS	<p>Agree but the wording could be expanded to require advertisers not to undermine current public health policies.</p> <p>Specifically advertising should not indicate healthy energetic or sporty lifestyles, cultural activity, celebrity endorsement, flavours, or use of e-cigarettes as desirable lifestyle accessories, or in conjunction with popular IT items such as USB sticks.</p>	<p>See 1.13</p> <p>See 1.9. B/CAP note that there is concern over the marketing of flavoured e-cigarettes and e-liquids. B/CAP understand that such flavours are commonly used by adults and does not consider it proportionate or necessary to prevent them</p>

			being referred to in advertising so long as the presentation of the flavour is not particularly likely to appeal to children or young people, consistent with the relevant rules below.
1.15	Prof GS	Creative and imaginative treatments are not necessarily irresponsible. Flavours are an important part of the adult vaping experience, not necessarily designed to appeal to children.	B/CAP agree
1.16	Ms R.	Consider glamorising should be prohibited. Consider that there should be rules governing where they can be advertising	See 1.9. B/CAP have provided other rules which prohibit both broadcast and non-broadcast ads being broadcast / placed where they are disproportionately likely to be seen by children and young people.
1.17	RCP&UKCTAS	Any glamorisation of electronic cigarette use, advertising featuring young people or non-smokers, advertising promoting the act of smoking, and advertising likely to appeal in other ways (such as through the use of humour) to audiences other than those implied by the characteristics of those portrayed in the advertising, and any advertising that might reasonably be expected to promote smoking or tobacco products should therefore be prohibited.	See 1.9.
1.18	ASH- W	Consider that electronic cigarettes should not be presented in scenes of a sexually suggestive nature as this may attract the attention of a younger (teenage) audience to the product, even if broadcast after the watershed;	See 1.9. Through these rules and the more general rules in their Codes, B/CAP seek to prevent advertising causing harm or serious or widespread offence.
1.19	BMA	The marketing of e-cigarettes should not promote the use of e-cigarettes as a means of circumventing laws and policies for smokefree workplaces and public spaces. Although the majority of users state that they use e-cigarettes mainly to reduce tobacco consumption or quit smoking conventional cigarettes, a significant proportion (15%) report that their primary purpose for using e-cigarettes is to circumvent the current smokefree legislation in the UK which prohibits smoking in enclosed public places. This dual use of e-cigarettes implicitly promotes tobacco smoking. The marketing of e-cigarettes should not encourage dual use because this directly undermines the goals of tobacco control policy. The pricing of e-cigarettes should also not be used as a marketing tool to promote dual use or appeal to non-smokers and young people.	B/CAP are mindful that tobacco smoking is prohibited in indoor public places in the UK, however those laws do not currently apply to electronic cigarettes. Some workplaces and public venues have prohibited their use but others have not. B/CAP does not seek to provide a view on where e-cigarettes may legitimately be used by prohibiting such depictions in advertising. Any direct or implied claims made in advertising about where products may or may not be used will need to be responsible, in line with the relevant rules in this

		While e-cigarettes may be marketed as an 'alternative to tobacco', they should not be glamorised or portrayed as a positive or attractive lifestyle choice. This includes celebrity endorsement, and sponsorship of sports and sporting events, as these approaches are likely to appeal to young people and non-smokers.	section, as well as accurate and supported by evidence in line with the general requirements set out in the Misleading Advertising sections of both Codes. The rules prohibit anything which promotes a tobacco brand or tobacco product. See 1.9.
1.20	TW	Agree but consider that it is legitimate to openly market ECs as a less harmful method of nicotine consumption. Should be able to positively discriminate in favour of ECs.	B/CAP consider that there is currently an insufficient evidential basis for claims about the safety of e-cigarettes. See 3.7
1.21	LCFT	The rules should ensure that advertising does not appeal to children and young people, create a social norm for e-cigarettes or lead e-cigarettes to be perceived as anything other than a method to manage nicotine withdrawal as part of the tobacco smoking cessation process.	See 1.9 and the specific rules pertaining to the protection of children.
1.22	CRUK	Advertisements should not undermine the message that quitting smoking is the best option to improve health. They should also not promote dual use of both e-cigarettes and tobacco cigarettes which may undermine quit attempts.	See 1.13
1.23	ASH, ASH Scot, FPH, SSA, RCPCH, RTCA, ADPH, BrBC, CCC, CFNI, LCC, TSI, HAT, HTCSG, SG, NSTAG, SSW, SFCDTCA, TCRG, TSI, CRUK, RSPH, CIEH, WSSS, TC, UKHF	Consider wording needs to prohibit claims that consumption of electronic cigarettes and other nicotine containing products has positive qualities perceived to exist by consumers as a consequence of the addictive nature of the product should be prohibited. An example would be the use of the word "satisfying", which was frequently used in relation to cigarettes in the era of widespread tobacco advertising. Any "satisfaction" for consumers is likely to be largely a consequence of relief from nicotine withdrawal symptoms.	B/CAP disagree. B/CAP consider that the products have a legitimate appeal to smokers seeking an alternative way of consuming nicotine. B/CAP are not aware of evidence that such language is likely to be harmful.
1.24	Mr B.	Rule should require "ethical and not exploiting psychological / behavioural vulnerabilities. Should avoid claims about positive transformation for smokers as these might appeal to	B/CAP consider that the rules already accomplish this. See 1.9 and 2.6. See revised rule 6.

		<p>non-smokers. No sexualised smoking imagery. Should not show the product in use which may appeal to smokers trying to quit. No endorsements by the medical industry.</p> <p>Should not suggest that the products are free of emissions, or that emissions are harmless. Not suggest they are odour free. Not suggest they are safe to use because they have been shown to be safe as food additives or that they are safe in enclosed spaces. Not refer to purity or naturalness of e-liquid. Not safer / healthier. Avoid claims that you can use e-cigs more or for longer than you smoked.</p> <p>Product placement and other subliminal advertising must not be used. No free samples / promotional prices. Ads must not show or refer to tobacco products.</p>	<p>Health claims will be prohibited under the rule framework. As in all sectors, other product claims will need to be robustly substantiated.</p> <p>See 9.20 18.14 and 2.3</p>
1.25	WSCC	<p>Disagree with wording – Marketing communications/advertisements for e-cigarettes must be socially responsible and ethical. The driving ethical principle of tobacco control is that of fairness. A fairness for children and young people to grow up in an environment where smoking is not seen as the norm, for smokers to get help to quit (as the majority wish to do) and for people to live and work without being exposed to the hazards of second hand smoke.</p>	<p>B/CAP consider that the rule framework already achieves this.</p>
1.26	SHWB	<p>“Cigarette” should not be used.</p>	<p>See 1.23</p>
1.27	PHS	<p>Agree. Nicotine is highly addictive. Consider that these (unregulated) products cannot reasonably be described as safe.</p> <p>Also take issue with the term e-cigarettes. There is no need for an abbreviation of electronic and feel this is cleverly worded to appeal to the “internet age”; children and adults between the age of 12 to 35. All advertising should use “electronic cigarettes”.</p>	<p>See 3.7</p> <p>See 4.2</p>
1.28	STCPAB	<p>Agree but consider the rule needs to prohibit links with sexuality, sexual attractiveness, enhanced sporting ability and aggressive behaviour. Concerns over implication that e-cigarettes are cool / sexy. This is already happening in current campaigns.</p> <p>Note similarities with old tobacco campaigns. Could increase use of both cigs and e-cigs. Aware of parents giving e-cigarettes to children to stop them smoking.</p>	<p>See 1.9</p> <p>B/CAP have provided an additional rule to prohibit links with tobacco brands.</p>
1.29	RCR	<p>The fundamental principle that should be adopted is that e-cigarettes should not be advertised or promoted in any way that could reasonably be expected to promote smoking of tobacco products, or that could make them appealing to non-tobacco users (especially children and young people).</p> <p>The fact that e-cigarettes contain nicotine should be made clear.</p>	<p>B/CAP agree and have provided rules for that purpose.</p> <p>B/CAP agree. See 5.3.</p>

1.30	TICAP	Consider there is little opportunity for excessive consumption of e-cigs. Do not consider that presenting products as sexy, cool or freedom-generating is problematic. These are themes for many advertising campaigns and cannot see the harm in this sector.	B/CAP agree, so long as such executions are responsible.
1.31	CIEH	Advertising is an important aspect to consider in maintaining 'smokefree' status of workplaces and public places and should not cause confusion. Particularly important in those premises such as pubs and clubs and where alcohol is available, which were previously closely associated with smoking activities and still are in many countries of the world. Particularly concerned about depictions which 'glamorise' the use of electronic cigarette products in these venues.	See 1.19 See 1.9
1.32	CEnTSA	There is a range of media where such products are advertised. Concerned about the volume of the advertisements along with the perceived glamorisation of their use by association with celebrities' and potential for product placement.	See 1.9 and 9.20. B/CAP cannot control the overall amount of advertising that takes place for individual products but the new rules seek to limit exposure of children to advertisements for e-cigarettes. B/CAP acknowledge that those rules cannot stop children seeing such ads altogether. B/CAP therefore also apply content rules so that when children and young people do see ads, they are not likely to find them of particular appeal, or to relate to the characters those ads may feature.
1.33	WG	It should not glamorise smoking or encourage people who do not currently use electronic cigarettes to try the product. Sexually explicit language which would breach current advertising rules should not be allowed. Rule should state that marketing communications should not exploit their vulnerability or lack of experience of children.	See 1.9. B/CAP have provided separate rules for the protection of children in relation to e-cigarette marketing and also have dedicated rules in both their Codes to prevent harm generally, and specifically to children.
1.34	Healthy Stadia	Agree but consider the definition of an e-cigarette needs to be expanded to catch portable shisha pens and hookah pipes, some of which contain nicotine and all of which are inhaled in a similar way to a cigarette. In addition, we would draw attention to the use of promotions teams used at events to promote e-cigarettes, in particular sports events, that should also be covered by this rule.	B/CAP agree and have broadened the definition to encompass this wider range of products. Please see the finalised relevant Code sections.
1.35	Fontem	Rule should prohibit promotional activity that may affect an under-18 audience e.g. sponsorship of events, sports teams or individuals or endorsements by celebrities / public figures / personalities which may also appeal to under-18s.	B/CAP do not regulate professional sponsorship arrangements, though ads which refer to or reflect them would need to be compliant with relevant rules. Advertising for e-cigarettes may

			appear in paid-for space at sporting venues subject to the new rules. See also 1.9. While the rules do not prohibit the use of celebrities, marketers will need to reassure themselves that the use of a particular celebrity is compliant with the rules relating to the protection of children.
1.36	GSK	<p>Agree. GSK can foresee the situation where healthcare professionals could be used by advertisers to endorse e-cigarettes (where the e-cigarette is not authorised by the MHRA as a medicine). As e-cigarettes are a relatively new product category which simulates and hence stimulates smoking behaviour and could lead to further experimentation with other nicotine containing products, such endorsements may not be socially responsible. GSK therefore seeks the addition of a rule that specifically prohibits health professionals from endorsing e-cigarettes.</p> <p>A similar situation could arise with the use of celebrities, where they could also glamorise the use of e-cigarettes (as has been highlighted recently in the US following the Golden Globes media coverage). GSK therefore seeks the addition of a rule that specifically prohibits celebrities from endorsing e-cigarettes. E-cigarettes which are available as medicines would not be able to use celebrity or healthcare professional endorsements in accordance with the current CAP and BCAP rules, and therefore without specific prohibition, the situation could give rise to celebrities being used to give disproportionate and misleading credibility to e-cigarettes that are not medicines. We therefore propose rules that prohibit celebrities from endorsing e-cigarettes - similar to those for medicines.</p>	<p>B/CAP agree. The finalised rules prohibit health and medicinal claims for unlicensed products and, in that light, B/CAP consider that a prohibition on endorsements by healthcare professionals is also warranted.</p> <p>B/CAP disagree. See 1.9.</p>
1.37	PAGB	<p>Use of the word “smoking” should be prohibited. “Vaping” or “using an e-cigarette” is preferable. shown. Ads should be obviously directly targeted to smokers and/or vapers only, does not depict a person using an e-cigarette (ie in hand and/or applied to the mouth) and the product is not shown in a positive light that may be appealing to non-smokers.</p> <p>We believe that BCAP Code Rule 10.4 would have to be amended to permit the advertising of e-cigarettes on broadcast media.</p>	<p>See 1.23, 2.6 and 6.62</p> <p>BCAP will amend its Code so that products falling within scope of these new rules are not caught by rule 10.4.</p>
1.38	ECITA	<p>Consider that the rule is clear but would benefit from accompanying guidance. Consider that excessive use is not a concern as consumers naturally self-titrate. This is confirmed in research published by the MHRA. Do not consider that toughness / aggression are particular issues in this sector.</p>	<p>B/CAP agree and will be providing guidance as casework develops once the rules are in place.</p>
1.39	NNA	<p>“Socially responsible” needs to be better defined. Encouraging smokers to switch to e-cigarettes is socially responsible, so the codes need to protect advertisers from</p>	<p>B/CAP consider the rule already accomplishes this.</p>

		challenge on purely ideological grounds. Our suggestion would be that the rule should be amended to say that advertisements should not be “socially irresponsible”. Consider there is no need to consider “excessive use”, as it is virtually impossible to overdose in any significantly harmful way, and even less likely that any consumer would find this attractive. Smokers do not tend to overdose on nicotine, as it is a) very difficult and b) not pleasant in any way.	
1.40	PML	It is essential that adult smokers have information about e-cigarettes, what they are, how they operate, and why smokers should use them instead of cigarettes. At the same time, e-cigarettes should be marketed in a way that minimize exposure to non-smokers and minors. Socially responsible marketing practices should serve the latter objective without jeopardizing the former.	B/CAP agree.
1.41	Save E-cigs	Consider that ads that show e-cigarettes being used should be allowed only if they are primarily aimed at former smokers and existing vapers.	See 1.3 and 2.6
1.42	RCP&UKCTAS	Consider that cigarette-like products should not be shown in use. When this market becomes saturated suppliers will look to the non-smoking population, which includes children, to expand their sales.	See 2.6
1.43	UKHF	Disagree. It is unclear what is intended by ‘socially responsible’ and what test would apply to determine whether a marketing communication or advertisement was in breach of this rule. It should be replaced by specific rules which require explicit reference to the fact that e-cigarettes and other nicotine containing products are an alternative to tobacco, and that they are not suitable for use by people who do not currently consume tobacco products.	See 1.3. B/CAP have provided numerous other specific rules which promote responsible advertising.
1.44	Cygnnet	Support the responsible advertising of electronic cigarettes but it is unclear why ‘socially responsible’ should be an express requirement for electronic cigarette advertisements over and beyond what is already provided in the CAP and BCAP codes. As we understand, only 3 areas within the CAP and BCAP codes make explicit reference to ‘social responsibility’: alcohol, gambling and lotteries. Each of these has known socio-economic effects. For example, alcohol has associated health risks and can lead to anti-social behaviour. Gambling and lotteries have potentially addictive effects that impact on wider society rather than simply the individual players. Cygnnet acknowledges that nicotine as present in electronic cigarettes is addictive, but its addictive properties, absent the concurrent exposure to harmful constituents in conventional cigarette smoke, do not constitute a sufficient basis to treat electronic cigarettes like conventional cigarettes. Further, as discussed in Section 4 above, smokers and ex-smokers are the overwhelming majority of consumers of electronic cigarettes, and use the products to either stay off tobacco cigarettes or reduce their consumption of tobacco.	It is a general rule in the CAP and BCAP Codes that advertisements must be socially responsible. The Committees see fit to repeat the rule in certain Code sections where responsibility is a particular concern. B/CAP understand that there are arguments for potential health benefits from e-cigarettes: however there is also potential for harm because they contain nicotine, their efficacy and safety is in question, they have the potential to renormalize smoking and there are questions over whether they may provide a gateway into tobacco use for the young or non-smokers. The finalised rules attempt to deal with those concerns as best they can, but as with all

		In addition, the term 'socially responsible' is subjective and open to interpretation. The use of this wording could give rise to complaints to the ASA based on personal interpretation of what 'socially responsible' means. We therefore question the need for Rule 1 in its entirety. In the alternative, if Rule 1 is to be introduced, we would urge CAP and BCAP to provide clear guidance in the Rules as to what 'socially responsible' means (over and above complying with the rest of the Rules), otherwise the Rules will be uncertain, which is of course to be avoided.	sectors, ASA adjudications will be required to establish precisely what responsible means in practice. B/CAP will publish guidance to take account of those decisions.
1.45	Counterfactual	Disagree. Would prefer this to be expressed in the negative: must not be socially irresponsible. This is because the definition of 'socially responsible' is highly subjective and open to moralistic interpretations. The slight change of wording places a stronger onus on the complainant to show that the advert is irresponsible, rather than on the advertiser to show that it is responsible. The problem would be excessive restrictions arising from prudish or excessively risk-averse interpretations of 'socially responsible'. There would for example be complaints that e-cig ads were socially irresponsible because they resembled cigarette ads. It would be better if the complainant had to demonstrate a harm arising from the claim of irresponsibility.	Requiring socially responsible advertising is, in B/CAP's view, the same as preventing irresponsible advertising. Ultimately compliance with the Codes is judged by the ASA Council, rather than the complainant or advertiser and the ASA will seek to apply the Codes in a proportionate and balanced way, as it already does with the corresponding rules found in other Code sections.
1.46	Ms B	Disagree. The use of the word 'excessive' should not be used as a barrier to stop their use as an alternative to smoking users generally 'self titrate' (use at their own level).E-cigs should not be linked to toughness or aggression or given a 'cool' factor. Overly sexual ads should be banned. Wording of 'For over 18 use' should be mandatory.	See 1.9 and 11.1
1.47	PV	Agree with the inclusion and wording of this rule. Social responsibility should also include not showing the use of e-cigarettes by vulnerable groups such as pregnant women until further studies have been carried out on the safety of these devices. E-cigarettes must not be glamourised and sexualised through advertising, as this will invoke interest in these products, and potentially tobacco products, from outside of the target audience, which, in the interests of public health, should be smokers and ex-smokers. The best way to target this audience would be to demonstrate that the e-cigarettes are an alternative to tobacco, without making any health or medicinal claims until there is robust clinical evidence to support these or the products have been licensed by the MHRA.	While B/CAP do not consider it necessary to prohibit such specific executions, the committees consider it unlikely that such a depiction could be made responsibly and in a way that was compliant with the rules in this section. See 1.9 B/CAP agree.

1.48	CAA	Consider the rule is unnecessary in its unmediated form and may prevent socially responsible advertising.	B/CAP intends to supplement the rule itself and / or provide guidance as ASA casework develops.
1.49	ARNS	Electronic cigarettes and other nicotine containing products preferably should not be advertised or promoted	B/CAP considers that, because e-cigarettes are a product that may be legally sold and advertised, they are capable of being advertised subject to the provisions provided in the new rules to ensure that such advertising is responsible.

Rule 2: Marketing communications / advertisements must contain nothing which promotes the use of a tobacco product or shows the use of a tobacco product in a positive light. This rule is not intended to prevent cigarette-like products being shown.

<p>Question 3: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.</p> <p>Question 4: Do you have any comments or evidence which can help to inform CAP and BCAP's goal of preventing the indirect promotion of tobacco products while still permitting e-cigarettes to be advertised?</p>		
2.1	<p>Respondent making points in favour of the proposal:</p> <p>Boots UK, CAA, ORG.A., Nicovertures, ECITA, Fontem, SEC, IPA, PML, PV, Dr. C, Rowlands, Prof. GW,</p>	<p>CAP and BCAP's (B/CAP's) evaluation:</p> <p>B/CAP are implementing the rule as proposed. See also 2.2 below.</p>
2.2	<p>ASH, RCPCH, BLF, CRUK, HSA, NELSA, FPH, SSA, ASH Scot., ASH-W, RTCA, ADPH, BHF, BrBC, CCC, CFNI, RCP&UKCTAS, SCOT, CIS, LCC, TSI, SPH, PHE, TFF, HAT, HTCSCG, SG, UKHF, TSNW, SFNA, SFN,</p>	<p>Consider the rule needs to be strengthened to include a general prohibition on any design, colour, imagery, logo or styles that could create an association with or confusion with any existing tobacco product, or any promotion of smoking-like behaviour. This is in line with the CAP code for tobacco products as set out in 10.3 and 10.4. The need for such a prohibition is clear, since some electronic cigarette brands are or will be produced and promoted by tobacco manufacturers, and it is important that advertising for such brands cannot be used as a covert means of promoting the brand identity of tobacco products. See below for suggested additional wording to rule 2 in bold and italics.</p> <p>"Rule 2: Marketing communications / advertisements must contain nothing which promotes any design, colour, imagery, logo style that might be associated in the audiences' mind with a tobacco product. They must also contain nothing which promotes the use of a tobacco product or shows the use of a tobacco product in a positive light. Cigarette-like products must not be shown in ways that could reasonably</p>

	NSTAG, SHWB, SFSW, SFCDTCA, TCRG, STCPAB, WG, RSPH, CIEH, WSSS, TC	be expected to promote smoking or tobacco products.”	necessarily causing harm. The new rule reads as follows: <i>“Marketing communications / advertisements must contain nothing which promotes any design, imagery or logo style that might reasonably be associated in the audience’s mind with a tobacco brand.”</i>
2.3	ASH Scot	Consider that tobacco products should not be shown, unless their presentation is in an unambiguously negative light.	B/CAP agree. B/CAP have not sought to prevent visuals of tobacco products outright, but have provided these rules to ensure that, in the context of e-cigarette advertisements, no positive references to them can be made.
2.4	Zandera	Agree with the proposal to permit visuals of e-cigarettes products, including e-cigarettes in use, provided that it is made clear that the product shown is an e-cigarette and not a tobacco cigarette. We would also advocate that wherever possible a link be provided to an agreed source of public information that would identify the health risks of smoking and the comparable risks of using e-cigarettes.	B/CAP agree but do not consider it proportionate to require additional statements. See 5.3.
2.5	WHOT	Consider that the rule needs to be strengthened to prevent the overt or subliminal branding of tobacco products (through associated colours, logos, etc.). The Brand Sharing Regulations need to be complied with, and there is a danger that without improvement, this rule could result in the benefits brought by the bans on both tobacco advertising and retail display being undermined.	B/CAP agree.
2.6	Ms B.	Adverts that include ecigs that look like tobacco products should not be shown. All others, i.e. those that obviously do not look like cigarettes should be allowed to show the product. If the product is shown in use, the ad should make clear that it is not smoke being emitted from the device.	B/CAP consider that it is a disproportionate restriction to prevent products being shown or shown in use provided that it is clear that the product featured is an e-cigarette and not a tobacco product.
2.7	TW	Agree. Positive discrimination in favour of ECs is essential. It is not the case that ECs are a gateway to tobacco or can be misconstrued as tobacco products particularly. The majority of products in use do not look like tobacco products. Ads should be able to show ECs being used so long as they are aimed at former smokers / users of nicotine.	See 1.3 and 2.6.
2.8	STCPAB	Agree in part. Consider the similarity of e-cigarettes in advertising will promote the use of tobacco products. Recommend that the rule specifies a limit on the amount of time allowed for visuals of e-cigarettes being shown on television advertising (for example: 10-20% of TV advertisement air time). We would like this rule to state that e-cigarette	See 2.6

		visuals should not be excessive in any advertisement.	
2.9	PHS	Agree. 91% of smokers state they are aware of the availability of electronic cigarettes. With such a high percentage of the target market already aware of the product there no longer requires promotion for its existence or supposed claims of it reducing harm. There needs to be a restriction on covert advertising of other tobacco products.	B/CAP considers that the revised rules serve to prevent any advertising of tobacco products in the context of e-cigarette advertising.
2.10	SFNA	The rule should offer a tight definition of the term 'cigarette-like'.	B/CAP considers that the term cigarette-like is sufficiently well understood in the context of e-cigarettes. The revised rules require that products are clearly e-cigarettes and not tobacco products.
2.11	WG	We agree with the first sentence of proposed rule. Images of electronic cigarette being used should be prohibited as they can look similar to smoking. The second sentence should be removed to prevent cigarette-like products from being shown. Claims, such as for example that e-cigarettes are the future of smoking should not be permitted.	See 2.6 The ASA will judge the acceptability of such claims in the context in which they appear.
2.12	RPS	Do not support the use of visuals of e-cigarettes as it is very difficult to differentiate between electronic and tobacco versions. While there is a place for e- cigarettes as an adjunct to help people stop smoking, one of their disadvantages is that they do not break the smoking cycle and so seeing pictures of people 'vaping ' could still promote tobacco smoking. E- cigarettes should be subject to the same advertising restrictions as tobacco products until they are licensed and then advertised only as medicinal products as a support to stop smoking. There is no rationale for these products to be advertised to non-smokers.	See 2.6 The advertising of tobacco products is prohibited by law and by the B/CAP Codes. E-cigarettes do not currently have those same restrictions and are not a tobacco product.
2.13	WSCC	The rule should include a ban on visuals of e-cigarettes as well as the use of e-cigarettes on advertisements. The reason for this is that vaping is similar to smoking in the hand-to-mouth action and in the look of the product; this is reflected in existing advertising and this will promote the use of tobacco products. In the event that a ban does not go ahead, there should be a ban on e-cigarettes that resemble a cigarette as viewers might confuse it with a real cigarette. One option would be to only permit advertising of e-cigarettes that do not look like tobacco products.	See 2.2
2.14	LCFT	Rule should prevent e-cigs being linked to tobacco products through any form of promotional material or brand sharing.	See 2.2

2.15	CRUK	Consider it would be to better to ban any reference to tobacco use (including “smoking”) except that which is unambiguously negative. This would reduce the risk of unintentionally promoting tobacco.	See 2.3
2.16	Fontem	Consider that the rules should take a strong position on “brand stretching” or “brand sharing” by banning the use of potentially well-known tobacco brand names in the promotion/advertising of e-cigarettes. We would recommend that this rule includes a reference to the existing brand-sharing regulations e.g. “Marketing communications / advertisements must not contain any references to specific tobacco brands or branded tobacco products which are explicitly banned under the Tobacco Advertising and Promotion (Brandsharing) Regulations 2004.” New e-cigarette products will be very different to existing products. Rules should reflect this.	See 2.2.
2.17	TICAP	The point of advertising e-cigs is to differentiate between two forms of nicotine delivery and to promote vaping as an alternative to smoking. To do this effectively, e-cigs must be shown in a positive light.	B/CAP agree.
2.18	Mr B.	E-cigs and tobacco should not be shown in a positive light. E-cigs mimic real cigs and discourage tobacco quit attempts. Favour no mention of tobacco at all.	B/CAP agree but see 2.3.
2.19	SHWB	Agree with this rule but it should also ensure that it is made clear that it is an alternative to tobacco and for current tobacco users, not an alternative to starting to smoke. We do not want to increase the number of people addicted to nicotine inadvertently as nicotine is still an addictive substance that is harmful to health.	See 1.3
2.20	HOM	Agree but believe it should be strengthened. Denormalisation of smoking is an important part of tobacco control. E-cigarettes should not be shown. However, if they are, they should not be shown actually being used by an individual. E-cigarette brands are or will be produced and promoted by tobacco manufacturers. Therefore it is important that advertising for such brands cannot be used as a covert means of promoting the brand identity of tobacco products.	See 2.6
2.21	RCR	Disagree. e-cigarettes should not be shown as smoking behaviours need to be discouraged and the behaviours are indistinguishable visually.	See 2.6
2.22	CMTA, Healthy Stadia,	Consider that, ideally, e-cigarettes should not be shown at all but, if they are, they should not be shown in use.	See 2.6
2.23	GSK, PAGB	Consider that e-cigarettes should not be shown in use. Smokers will already understand the mechanism of use (see GSK response). GSK said: cigarettes being shown, due to the close visual association between smoking a cigarette and using an e-cigarette. Images of persons using an e-cigarette and a person smoking a tobacco	See 2.6

		product are virtually synonymous. Showing visuals of someone deriving pleasure from or looking 'cool' using an e-cigarette implies that smoking is also enjoyable and cool.	
2.24	MSSS	Since many e-cigarettes are visually indistinguishable from cigarettes this will inevitably lead to the re-association of smoking with glamour, youth, slimness, beauty. This is a massive concern.	See 2.6. The revised rules require that it is clear that the product is an e-cigarette and not a tobacco product.
2.25	FPH, MSSS, NHS Grampian	Consider that rule should require that cigarette-like products not be shown.	See 2.6
2.26	ORG.A.	Requested guidance on how to show e-cigs (for example in use)	See 2.6
2.27	J&J	Do not fully agree with this rule. The similarity of e-cigarettes to cigarettes and the use of e-cigarettes could promote smoking indirectly. Consider that the use of the e-cigarette must not be shown in advertisements as it can be interpreted as tobacco cigarette. This precludes vaping or the product being shown held in the hand like a cigarette. Consider that e-cigarettes which are indistinguishable from tobacco cigarettes (or their packaging) should not be depicted at all. Advertisements should avoid creating an impression to casual observers that this is an advertisement for a tobacco product eg: e-cigarette on outdoor posters with low dwell time. The term e-cigarette should not be used in advertising or on packs because it includes the term cigarette and therefore indirectly promotes tobacco. Alternatively these products can be referred as electronic nicotine delivery systems or vapours.	See 2.6
2.28	Cygnnet	<p>Agree. However, the final sentence of the proposed Rule should be clarified so that it is clear to advertisers that the use of electronic cigarettes in advertisements would not be prohibited.</p> <p>Advertisements whose purpose is to promote tobacco products or whose effect is to do so are prohibited under the Tobacco Advertising and Promotions Act 2002 in any event, however we acknowledge that CAP and BCAP may wish to remind advertisers of this prohibition.</p> <p>Although electronic cigarettes superficially resemble tobacco cigarettes, there is no evidence that the physical appearance of an electronic cigarette directly or indirectly promotes any tobacco products. Electronic cigarettes are likely to diminish the market for tobacco products and denormalize tobacco smoking.</p>	<p>B/CAP consider that the rule already achieves this aim.</p> <p>B/CAP considers that the tobacco prohibitions are well known to those engaged in the marketing of tobacco. The revised rules make clear that there can be no promotion of tobacco.</p>
2.29	NNA	We agree with the sentiment (that ecigarette advertising should not encourage/promote	These rules do not attempt to reflect the

		<p>smoking), but the wording is problematic. The Tobacco Products Directive classes e-cigarettes as tobacco products and there are signs that the WHO will include all nicotine products under the FCTC.</p> <p>A clear distinction needs to be made between combustible (smoked) tobacco products and harm-reduced alternatives, such as e-cigarettes. Blanket terms like “tobacco products” are too broad and will quickly become obsolete when, for example, “heat not burn” tobacco products come to the market. Avoiding broad, but restrictive terms like “tobacco products” will help to future-proof these rules, ready for other new technologies as they emerge.</p>	<p>provisions of the Tobacco Products Directive. Please see the separate regulatory statement.</p> <p>B/CAP have used terminology which they consider is currently accepted and understood.</p>
2.30	Nicoventures	<p>Consider that the rule should make clear that e-cigarettes may be shown in use and that advertisers may provide factual information and present e-cigarettes as a product for smokers / an alternative to tobacco. Would appreciate clarity that the rule does not prevent e-cigarettes being presented as a product for smokers or reference to product characteristics such as “no tobacco” and “no smoke”.</p> <p>The Committees might consider an express prohibition may be on using any logo, branding or imagery which is associated with a tobacco brand (we think this is likely to be caught by the proposed rule but it arguably merits an express statement).</p>	<p>B/CAP consider that the rules already achieve this. Factual statements that are not health or medicinal claims which are substantiated and not misleading may be made.</p> <p>See 2.2</p>
2.31	CEnTSA	<p>Consider that ads should state prominently that the product is an e-cigarette so that it is not easily confused with traditional cigarettes.</p>	<p>B/CAP have provided a rule which requires marketers to make clear that products are e-cigarettes and not tobacco products.</p>
2.32	CMTA	<p>Consider e-cig ads should not promote brand identity of tobacco products.</p>	<p>See 2.2</p>
2.33	Counterfactual	<p>Disagree. This practice is already covered by the Tobacco Advertising and Promotion Act (2002) and relevant statutory instrument on brand sharing. Those trying to advertise tobacco products should be aware that this law applies and has stronger sanctions than the B/CAP Codes. Secondly, if it is decided that this rule is an important reminder and will remain in the code, the protection in the second sentence should be extended to include vaping: the behaviour, not just the product. Suggested wording: This rule is not intended to prevent use of e-cigarettes or cigarette-like products being shown. This goal is met by the controls of the Tobacco Advertising and Promotion Act (2002). It would be more appropriate to remind advertisers of this carefully worded legislation than to create new rules that may introduce ambiguities or even conflicts with the legislation - implying that some practices are permitted, when they are not actually permitted under the Act.</p>	<p>The draft and final Code rules, and the self-regulatory framework that exists to administer them, are designed to work within and to complement legal controls. The rules provide an alternative, and in some instances the only, means of resolving disputes about marketing communications. It stimulates the adoption of high standards of practice in matters, such as taste and decency, that are extremely difficult to judge in law but fundamentally affect consumer confidence in marketing communications.</p>
2.34	DCTA	<p>Disagree. If their use is directed at smokers only then they should be marketed only as a quitting aid and fall under the appropriate medical regulations. The potential for</p>	<p>See 1.3, 1.49. Smoking cessation and reduction claims may only be made for</p>

		confusion and protection of young people from being encouraged to take up what is potentially an addictive substance and potentially a gateway to tobacco use should take precedent. We think this is the wrong way round. The onus should be on manufacturers to demonstrate lack of harm, the protection of the consumer and young people takes priority.	products that have been authorised by the MHRA.
2.35	ARNS	Electronic cigarettes and other nicotine containing products preferably should not be advertised or promoted	See 1.49
2.36	SELITN, LOTSA	Disagree. Advertising of e-cigarettes replaces the prohibited advertising of tobacco products and is now prevalent. It negates the good work done by the original tobacco advertising ban. Their advertising should be questioned until the evidence base states they are a safe product. There is very little quality control which often means there is a difference between what is on the label and what is delivered to the user. All health professional bodies currently state not to promote e-cigarettes and monitoring and reporting the use of them is essential.	See 1.49

Rule 3: Marketing communications / advertisements must not contain health or medicinal claims unless the product is licensed for those purposes by the MHRA. E-cigarettes may however be presented as an alternative to tobacco.

Question 5: Do you agree with the proposal to prohibit health claims for e-cigarettes? If not, please explain why and provide any suggestions you may have for improvement.		
3.1	<p>Respondent making points in favour of the proposal:</p> <p>ASH-W, Boots UK, CAA, DCTA, Healthy Stadia, ORG.A., GSK, NELSA, MSSS, PAGB, Fontem, ARNS, LCC, PV, HOM, WG, Dr C., SG, LCFT, UKHF, SELITN, TSNW, Rowlands, LOTSA, WSCC</p>	<p>The organisations listed on the left agreed with the inclusion of the rule as proposed. A summary of significant points follows below:</p>
<p>CAP and BCAP's (B/CAP's) evaluation:</p> <p>As a result of the consultation B/CAP are implementing a modified version of this rule and have added a separate rule prohibiting endorsement by health professionals. The rules read as follows:</p> <p><i>“Marketing communications must not contain health or medicinal claims unless the product is licensed for those purposes by the MHRA. E-cigarettes may be presented as an alternative to tobacco but marketers must do nothing to undermine the message that quitting tobacco use is the best option for health.”</i></p> <p><i>“Marketers must not use health professionals to endorse electronic cigarettes.”</i></p>		
3.2	<p>ASH, ASH Scot, ASH-W, BLF, CMTA, CRUK, GSK, HAS, FPH, RCPCH, SSA, RTCA, ADPH, BHF, BrBC, CCC, CFNI, SCOT, CIS, TSI, SPH, HOM, PHE, TFF, HAT, HTCSG, UKHF, SFNA, SFN, NSTAG,</p>	<p>We agree with the proposed wording (including square brackets) of this rule, except that we would recommend replacing a permission to present electronic cigarettes as an alternative to tobacco with a requirement to do so. This is because all advertising and promotion of electronic cigarettes and other nicotine containing products should be directed at existing tobacco users and not at potential new users of nicotine.</p>
<p>See 1.3</p>		

	SHWB, SFCDTCA, WHOTS, WSSS, TC	SFSW, TCRG, RSPH, CIEH, TC	
3.3	Ms B.	The 'an alternative to tobacco' should be allowed. Also 'no tar', 'no smoke' 'no ash' descriptives.	Alternative claims are permitted as are factual claims about product ingredients and the harms of tobacco.
3.4	BMA	The marketing of e-cigarettes not licensed as medicines should not imply any general health benefits, or use misleading language such as 'safe', 'healthier', or 'harmless'. Analysis of the growing market for e-cigarette suggests that these approaches are being used in marketing and advertising, as well as public relations communications. The BMA agrees that the marketing of e-cigarettes as an 'alternative to tobacco' does not directly imply a health or medicinal claim.	B/CAP agree and consider that the rule achieves this.
3.5	RPS	Yes we agree with the proposal to prohibit health claims for e –cigarettes. While e-cigarettes can be used as a potential aid to stopping or reducing smoking tobacco products, they must not be promoted as a safe alternative or healthy option until more evidence is available. We believe that they should be restricted in the same way as tobacco products due to their visual association with conventional cigarettes and because tobacco companies now own several major e-cigarette brands.	B/CAP agree.
3.6	PHS	Agree. It is important that the product is advertised only as an alternative to smoking tobacco products and not promoted to non-smokers or children as a recreational product. Again advertising as a safe alternative is misleading and any such usage must be prohibited unless regulated as a medical product.	B/CAP agree.
3.7	Prof GW	E-cigarettes do not treat disease or enhance healthy functioning – except – and it is an important exception – they enable people who are unable or unwilling to cease using nicotine to do so in a way much safer than smoking cigarettes. These products are clearly safer than smoked products. Advertisers must be able to make a 'safer than cigarettes' or 'less risky than cigarettes' claim, without making a medicinal claim as per MHRA definition of medicinal. These products are not medicines. Advertisers must also be able to make statements of fact such as that e-cigarettes do not contain tobacco, that there is no combustion and hence no smoke, that there is no fire hazard (important given the high proportion of domestic fires due to smoking cigarettes) and that there is no second hand smoke.	B/CAP understand that there is presently no evidence base for the long term safety of e-cigarettes. In the absence of that B/CAP consider that an outright prohibition on health claims is appropriate. There is an exemption from that prohibition for products which are licensed as medicines. This does not preclude marketers making factual statements about what their product does or does not contain, or about the harms of tobacco,

			<p>provided that all such claims are robustly substantiated.</p> <p>B/CAP acknowledge that situation may change and welcome submissions from marketers.</p>
3.8	Mr B.	All health and medicinal claims should be prohibited. No evidence that ECs are effective quit aids.	B/CAP agree. See 3.7.
3.9	Zandera	We agree with the proposal to prohibit health claims for e-cigarettes that have not been appropriately authorised as a medicine or medical device by the MHRA provided that statements that e-cigarettes are safer than cigarettes are not to be interpreted as health claims.	B/CAP agree, however in B/CAP's view "safer than" and "healthier" claims are health claims, and would therefore be prohibited by this rule.
3.10	ASH Scot	<p>We agree with the proposed wording of this rule and the proposed definition of health claims for the purposes of this rule. Most experts view e-cigarettes as likely to be less hazardous than tobacco cigarette smoking, therefore moving existing tobacco smokers who are unable or unwilling to quit to e-cigarettes is likely to be beneficial to public health. However, because of the novelty of e-cigarettes and the current uncertainty over their long-term impact, or the level of appeal they are likely to have amongst young people, we believe a precautionary approach to advertising and promotion activities is prudent.</p> <p>Hence we believe that this rule (see also our comments on Rule 1) should require not just permit e-cigarette advertisements and communications to present e-cigarettes as an alternative to tobacco cigarettes for current tobacco cigarette smokers only.</p> <p>As evidence on e-cigarettes develops, it may be the case that this rule could be revised to permit certain forms of health claims (e.g. that e-cigarettes are less harmful than smoking tobacco cigarettes) if the claim was supported by robust scientific evidence, while maintaining the prohibition on therapeutic claims that may only be permitted if the product is regulated through the MHRA.</p>	<p>B/CAP agree.</p> <p>See 1.3</p> <p>B/CAP will monitor the effect of the new rules and emerging evidence and, if necessary, consider revising rules where appropriate.</p>
3.11	CEnTSA	Agree. They should not be marketed as an alternative to tobacco. Although from a health perspective there may be harm reduction benefits caution needs to be applied to those products falling outside the definition of a medicinal product; particularly when no particular testing has been carried out to substantiate any such health benefits.	See 1.3 and 3.7.
3.12	Fontem	We would suggest clarifying the wording to ensure that it is clear that the "health or medicinal claims" to which the rule refers are specific to e-cigarettes. This could be done by including the definition of "health claims" within the body of the question, as per our	The rules will apply specifically to e-cigarettes.

		<p>response to question 6.</p> <p>This requirement may need to be reviewed in the future, for example subject to potential changes in UK regulation and/or as a result of any future scientific evidence that indicates a direct benefit from using e-cigarettes as an alternative to tobacco cigarettes</p>	
3.13	PAGB	<p>E-cigarettes should not be presented as aids to smoking cessation, with craving relief claims, or with any claims relating to health. Quitting or being safer option to smoking and linking to NHS campaign should not be allowed.</p> <p>E-cigarettes advertising should not seek associations with charities or bodies who are closely associated with smoking cessation or health. Furthermore, there should be no comparison with any licensed products. Guidance on the extent of permitted comparisons with tobacco products, e-cigarettes licensed as medicines or NRT [nicotine replacement therapies] and non-licensed e-cigarettes is required either to be included in the code or a guidance note.</p>	<p>Ads for e-cigarettes may not make smoking cessation or reduction claims without a licence from the MHRA.</p> <p>B/CAP do not regulate commercial partnerships but marketers making references to such partnerships, charities, public health issues and the like would need to exercise caution in order to avoid implying prohibited health or medicinal claims.</p>
3.14	PML	<p>We agree that therapeutic claims, such as “e-cigarettes are smoking cessation therapies,” should be prohibited unless the product has been licensed by the MHRA. Claims that e-cigarettes reduce the risk of smoking-related disease should be prohibited unless substantiated by evidence reviewed and authorized by a competent regulatory authority.</p> <p>A distinction should be made between a therapeutic claim and a reduced risk claim. For e-cigarettes, therapeutic claims address smoking cessation or the treatment/prevention of disease, whereas a reduced risk/health claim addresses the reduction of risk compared to a combustible cigarette.</p>	<p>B/CAP agree. Marketers who obtain a medicines licence may make approved claims.</p> <p>B/CAP consider that reduced risk claims are likely to be health claims and would be caught by the prohibition in this rule.</p>
3.15	NHS Lanarkshire	<p>Yes, until the evidence shows this, no health claims should be made for e-cigarettes. There is some anecdotal evidence that patients with respiratory conditions have their symptoms exacerbated following e-cigarette use. We currently do not know the health consequences of e-cigarettes therefore they should be used with caution amongst smokers.</p>	<p>B/CAP agree. See 3.7.</p>
3.16	NHS Grampian	<p>Health claims for e-cigarettes should be prohibited. The evidence to support such a claim is not strong enough.</p>	<p>B/CAP agree. See 3.7.</p>
3.17	TICAP	<p>If there is empirical, peer reviewed evidence to show harm reduction then such claims should be allowed. The current criteria are too restrictive, hidebound and unhelpful to the promotion of a healthier future.</p>	<p>See 3.7</p>
3.18	NNA	<p>There is no doubt that e-cigarettes are clearly less harmful than smoking, by an order of magnitude. Advertisers have to be able to tell consumers that their products are less</p>	<p>See 3.7</p>

		dangerous than smoked tobacco and to allay fears regarding the risk to third-parties (though “passive” exposure to vapour). These are fundamental characteristics of e-cigarettes and consumers have a right to know.	
3.19	PHE	Advertising which seeks to associate the replacement of smoking with a healthier lifestyle or better life should not be discouraged.	B/CAP agree, so long as such advertising is compliant with these rules.
3.20	STCPAB	No we do not agree with the proposal to prohibit health claims. There is a growing body of evidence to suggest that e-cigarettes are a safer nicotine delivery system to smoking tobacco and therefore we feel that it is reasonable to allow marketers of e-cigarettes to state that e-cigarettes are a “healthier” alternative to smoking tobacco in advertisements of their products. Smokers may be encouraged to use e-cigarettes and stop using tobacco products this has the potential to achieve significant public health gain.	See 3.7
3.21	Nicoventures	<p>On the basis of the proposed definition we do not agree with the proposal to prohibit health claims. Instead, we believe this rule should read: “Marketing communications / advertisements must not contain medicinal claims [unless the product is licensed for those purposes by the MHRA]. E-cigarettes may however be presented as a product for smokers / an alternative to tobacco. Marketing communications / advertisements may also contain statements of fact, statements about the product and / or its characteristics and claims (not being medicinal claims) that are supported by robust scientific evidence.”</p> <p>To help address any concerns about unsubstantiated claims our above proposal refers to the need for robust substantiation. Claims should also be product specific rather than general to the category. The need for proper substantiation simply repeats existing requirements of consumer law but we think it may be helpful to have an explicit statement if there are specific concerns in the context of e-cigarettes.</p>	See 3.7
3.22	ECITA	It would be helpful to have much clearer guidance on health claims, (as distinct from legally-defined medicinal claims) so that appropriate health claims (which are factually accurate and non-medicinal) can be made. There is a rapidly growing body of evidence to support that vaping is orders of magnitude safer than continuing to smoke, and while we have approximately 20% of the adult population still smoking, it is essential that ecigs are permitted to be advertised honestly. Indeed, it would be misleading and actively harmful if ecig advertisers were not allowed to convey this message in a comprehensible and attractive way, to encourage those recalcitrant smokers who are unable or unwilling to quit smoking to make the switch to vaping. Misleading information can cause harm if they react to misplaced concerns in ways that cause them to continue to smoke. Consider the following (or words to their effect) to be appropriate, factual statements: “A healthier alternative to smoking”, “Safer than smoking”. Smoking cessation / reduction claims should be prohibited.	See 3.7

3.23	TW	Disagree. ECs deliver a potential health benefit – not because of their own properties but by virtue of the user avoiding tobacco.	See 3.7
3.24	Cygnnet	As Regulation (EC) 1924/2006 does not apply to electronic cigarettes, we consider it inappropriate to stretch the application of this Regulation to items beyond its scope. Substantively, it seems very likely that as more scientific studies are conducted it will be possible to robustly substantiate an association between switching from tobacco to e-cigarettes and health benefits. Assuming that such a claim could (now or in the future) be substantiated, the question arises as to whether it should nonetheless be completely prevented by the Rules. It is difficult to see why it should be; on the contrary, assuming substantiation, it would be firmly in the public interest for the potential health benefits of e-cigarettes as an alternative to be drawn to wider attention. Therefore suggests that this restriction is inappropriate.	See 3.7
3.25	RCR	No – smoking behaviours need to be portrayed as not acceptable and simple visuals cannot distinguish between the two.	See 2.6
3.26	SEC	No. E-cigarettes are less harmful than tobacco cigarettes and clearly deliver a potential health benefit to a smoker switching from tobacco cigarettes to e-cigarettes. There is nothing contained with an e-cigarette that provides a potential health benefit. The potential health benefit is derived from the fact that the vaper is no longer smoking or smoking fewer tobacco cigarettes. Save e-cigs wish to make it clear that e-cigarettes are not a medicinal product, they are simply a viable alternative to conventional tobacco products that allow their users to continue their nicotine use without any of the harm associated with tobacco. Save E-cigs would though like to make it clear that no electronic cigarette manufacture should be allowed to advertise their products as supporting a legitimate and approved nicotine dependency withdrawal. Any e-cigarette manufacturer wanting to make such claims should seek to have their products medicinally regulated by the relevant authorities.	See 3.7 B/CAP agree.
3.27	SHWB	It should be ensured that adverts do not glamorise or have sexual content. It should be clearly stated that e-cigarettes are addictive.	See 1.9 and 5.3
3.28	RCP& UKCTAS	No. Although the precise magnitude of any hazard from long-term use of electronic cigarettes is unknown, as is the purity and effectiveness of most products currently available on the market, none is remotely likely to be as hazardous as smoked tobacco. We suggest that advertisements should be required to provide factual information that electronic cigarettes are likely to be much less hazardous than smoking, since the purpose of advertising from a health perspective is to encourage as many smokers as	See 3.7 and 5.3.

		possible to quit smoking. This could be done by stating that the products do not contain the harmful chemical found in cigarette smoke. We also suggest that advertisements should include the NHS Quitline number and/or PHE SmokeFree URL. Health claims should be reasonable and accurate. It is reasonable and accurate to say that the product is less hazardous than a cigarette by virtue of not containing the harmful chemicals found in cigarette smoke.	
3.29	IPA	Disagree. The right to make health claims should be available provided the advertiser has sufficient evidence to do so.	See 3.7
3.30	Counterfactual	Disagree. This is inappropriately restrictive. Not all health claims are medical claims of the type licensed by the MHRA. Health claims other than those regulated by MHRA should be permitted, subject to the general requirement that they are true and fair. Consider that the rule should include definitions taken from relevant legislation for medicines-by-presentation and dovetail with MHRA statutory and voluntary controls.	See 3.7

Question 6: Do you agree with the proposed definition of health claims for the purposes of this rule? If not, please explain why and provide any suggestions you may have for improvement.

3.31	<p>Respondent making points on the proposal:</p> <p>ASH Scot. ASH-W, CRUK, DCTA, MSSS, PAGB, RCPCH, IPA, ARNS, CEnTSA, PV, Dr C., SG, UKHF, SELITN, Rowlands, LOTSА, WSCC, CENTSA</p>	<p>The organisations listed on the left agreed with the proposed definition. A summary of significant points follows below.</p>	<p>CAP and BCAP's (B/CAP's) evaluation:</p> <p>See 3.1</p>
3.32	RPS	The definition is of itself acceptable but the in addition to wording restrictions the visuals used should also reflect this principle and not seek to imply health or wellbeing.	For the purposes of both the CAP and BCAP Codes a claim can implied or direct, written, spoken or visual. The name of a product can constitute a claim.
3.33	Boots UK	We do not feel it appropriate to use a definition lifted from legislation relating to food for defining health benefits for e-cigarettes. We feel that it should be for the MHRA to determine the definition on a similar basis to any such definitions for medical devices and medicines.	B/CAP are not seeking to treat e-cigarettes as a food, rather they have chosen a definition from legislation which, having been shown

			to function effectively elsewhere is likely to do so in this context.
3.34	Mr B.	Disagree. Should also include psychological health claims such as feeling better / more independent.	B/CAP consider that the rule already accomplishes this.
3.35	CAA	The intended definition is debatable. Food / food supplements are absorbed by the user and not by anyone around them. Similarly so for cosmetics. This is not so for either tobacco or e-cigarettes.	See 3.33
3.36	Fontem	We would suggest clarifying the definition to avoid uncertainty: "any claim that states, suggests or implies that e-cigarettes have a direct and beneficial impact on health or are a healthier alternative to tobacco products." We would also suggest including the definition within the rule so as to ensure it is as clear and comprehensive as possible. This definition may need to be reviewed in the future, for example subject to potential changes in UK regulation and/or as a result of any future scientific evidence that indicates a direct benefit from using e-cigarettes as an alternative to tobacco cigarettes.	B/CAP consider that the rule already achieves this aim.
3.37	Zandera	We would propose that a health claim be defined as 'any claim that a product can be used to quit smoking or provide a form of nicotine replacement therapy'.	Such claims would be medicinal claims requiring a licence from the MHRA.
3.40	Nicoventures	The proposed definition of health claim is too wide and could prevent the communication of factual product characteristics such as "no tobacco" and "no smoke" on the basis that they could be implied health claims. However, such statements and claims that are supported by robust scientific evidence (not being medicinal claims) should be permitted. For example, we think that a comparative claim versus tobacco products, which some people may interpret as a health/safety claim, should be permitted (subject of course to the need for proper substantiation by robust scientific evidence).	B/CAP does not consider that factual claims about the presence or absence of product ingredients are health claims for the purposes of this rule. See also 3.7
3.41	NHS Grampian	Any health claim based on a link with food and nutrition is quite inappropriate for a product which is simply a delivery system for a highly addictive substance.	See 3.33
3.42	Counterfactual	No. Some provisions are required to govern health claims that fall outside the definitions that would require the products to be regulated as medicines. For example: 'vapour contains no tar' could be construed as a health claim but it would not be regarded as medical claim. In fact, it is not clear that declaring that 'e-cigarettes are a more healthy alternative to smoking' would constitute a claim to be treating or preventing disease. There is no serious dispute that this claim is correct. That claim would not be classed as medical claim but the advertiser should	See 3.7 and 3.40

		be able to communicate this as long as it is true, which it is.	
3.43	WG	Using the definition from the EU regulation on the nutritional and health claims made on food could be a useful way of defining health claims for e-cigarettes. However, clarification is needed on whether this would also include the safety of these products as this is also referred to in the nutrition and health claims regulations for food. The Welsh Government would want to see a ban on making such claims until there is clear evidence that e-cigarettes are safe. A claim that e-cigarettes are an alternative to tobacco should not include any statement that they can help you to permanently give up tobacco if they have not been licensed as a medical product. There are some risks that a link will be made between licensed products that could help you to quit and unlicensed e-cigarettes. Clear guidelines on what would be permitted under this rule should therefore be published to address this issue.	B/CAP agree. B/CAP consider that “safer” claims are caught by this rule.

Question 7: Do you agree with the proposal to prohibit medicinal claims? If not, please explain why and provide any suggestions you may have for improvement.			
3.44	Respondent making points on the proposal: ASH, ASH-W , Boots UK, CAA, CENTSA Counterfactual, CMTA, DCTA, HSA, MHRA, Nicoventures, NHS Grampian, NHS Lanarkshire, MSSS, PAGB, RCPCH, IPA, NNA, ARNS, NHS Lanarkshire, PML, PV, HAT, WG, Dr C., RCR, RPS, UKHF, SELITN, Rowlands, SFN, LOTSA,	The organisations listed on the left agreed with the proposal. A summary of significant points follows below.	CAP and BCAP’s (B/CAP’s) evaluation: See 3.1

	SFCDTCA, WSCC, Zandera, RSPH, CIEH, WSSS, TC		
3.45	Boots UK	Agree, unless the product advertised is a licensed medicine, only claims should be permitted which are compatible with its marketing authorisation and product licence.	B/CAP agree.
3.46	Fontem	Agree in principle. As before, we would suggest that it is vital to include the phrase “unless the product is licensed as a medicinal product or a medical device by the MHRA” This provides for the different regulatory regimes that e-vapour products could fall under. This proposal may need to be reviewed in the future, for example, subject to potential changes in UK regulation and/or as a result of any future scientific evidence that indicates a direct benefit from using e-cigarettes as an alternative to tobacco cigarettes.	B/CAP agree.
3.47	MHRA	Agree with the proposal to restrict medicinal claims to those products that have been authorised as a medicine or medical device. Agree that any claim that a product can be used to cut down or quit smoking or to provide a form of nicotine replacement therapy is likely to be seen as medicinal.	B/CAP agree.
3.48	J&J	<p>Agree and furthermore advertising should clearly state that e-cigarettes are not licensed as smoking cessation aids or as a safer alternative to smoking for tobacco harm reduction (as per UK licensed indication).</p> <p>Nor should e-cigarette advertising campaigns be allowed to associate with established health campaigns focussed on tobacco cessation or harm reduction. If e-cigarette companies associate with charities or bodies who are closely associated with smoking cessation or health or other similar organisations, they must ensure that the output of such collaboration does not mislead consumers that their product can help quit smoking or imply a health benefit. There should be no comparison with any licensed products in e-cigarette advertisements as that might mislead consumers into believing that e-cigarettes are licensed medicines.</p>	<p>B/CAP agree.</p> <p>Any claim, direct or implied that a unlicensed product can aid smoking cessation or reduction would be prohibited by this rule and the Medicines rules. See also 3.53</p>
3.49	RCR	Yes - e-cigarettes promote smoking behaviours and do not have an ability to be weaned down in the same way as Nicotine Replacement Therapy. To promote the behaviour and then say is useful in assisting behavioural change away from a significant health risk is contradictory.	B/CAP agree.
3.50	STCPAB	Yes we agree with the proposal to prohibit medicinal claims. We agree that any product that makes a medicinal claim must be appropriately authorised as a medicine or medical device. The proposal to prohibit medicinal claims being made in the marketing and advertisements of e-cigarettes is particularly important as there is currently a lack of rigour and testing into the safety and efficacy of e-cigarettes. Consider that licensing of e-cigarettes via the Medicines	B/CAP agree.

		and Healthcare Products Regulatory Authority (MHRA) is an important step in managing the risk of poor and ineffective products that have not yet been proven to be successful in supporting people to quit smoking	
3.51	RCP&UKCTAS	It depends which medicinal claims. We think that e-cigarettes should be presented as an alternative to tobacco and that advertisements should make clear that they are less hazardous than smoking. Saying that e-cigarettes can help smokers stop using conventional cigarettes would be justified. More formal health claims would need to be justified by appropriate evidence	See 1.3 and 3.7
3.52	ECITA	We agree completely that medicinal claims for unlicensed products should be prohibited. Indeed, all responsible members of our industry ensure they do not make such claims, and we support swift enforcement against those who choose to flout the law in this way.	B/CAP agree.
3.53	TICAP	No we do not agree with the proposal as it may well mean that e-cig manufacturers will have to get their products licensed from the Medicines and Healthcare Products Regulatory Agency (MHRA). This is an expensive and time consuming process and the members of the MHRA.	Under current UK legislation, any product that makes a medicinal claim must be appropriately authorised as a medicine or medical device. Any claim that a product can be used to cut down or quit smoking or to provide a form of nicotine replacement therapy is likely to be seen as medicinal by the MHRA and the ASA. B/CAP has no discretion to change that position.
3.54	CEntSA	E-cigarettes that have been licenced should be used as a cessation product and advertised as such	B/CAP agree.
3.55	TW	Not a medicinal product nor are they NRT. They are a mechanism for people to continue nicotine use without the harms associated with tobacco. Favour prohibiting claims that a recreational EC can support a legitimate and approved programme for nicotine dependency withdrawal. Such claims should require medicinal licensing.	See 3.53
3.56	Cygnet	Support the proposal to prohibit medicinal claims unless the electronic cigarette has been granted marketing authorisation. The wording of the proposed rule should be aligned with legislative framework applying to medicinal products and medical devices. The wording in square brackets is too narrowly worded and should be amended to include products that are licensed by either the MHRA or the European Medicines Agency or are CE-marked medical devices.	The wording allows for claims to be made for authorised products. B/CAP understand that products having a pharmacological effect will need a medicines licence.

Rule 4: Marketing communications / advertisements must make clear that the product is an e-cigarette.

Question 8: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.		
4.1	<p>Respondent making points in favour of the proposal:</p> <p>ASH Scot, Boots UK, CAA, CMTA, DCTA, ECITA, Fontem, GSK, Healthy Stadia, ORG.A., Nicoventures, NHS Grampian, MSSS, SEC, PAGB, IPA, CCC, SCOT, CIS, CEnTSA, PML, SPH, HOM, TFF, WG, Dr C., SG, RCR, RPS, TSNW, Rowlands, STCPAB, WSCC, TW, Zandera, Ms B., RSPH</p>	<p>The organisations below agreed with the inclusion of this rule. A summary of significant points follows below.</p>
4.2	<p>ASH, HAS, FPH, RCPCH, SSA, ADPH, CFNI, TSI, NHS Lanarkshire, PHE, HAT, HTCSG, UKHF, SFNA, SFN, NSTAG, SFSW, SFCDTCA, RSPH, CIEH, WSSS, TC</p>	<p>Widespread concerns about nicotine containing products have been stimulated at least in part by the use of the term “e-cigarette” and the mis-perception that these products are “smoked”. Therefore we would recommend that the term “vapouriser” be required in preference to ‘e-cigarette’. If this is not accepted then the descriptor “electronic cigarette” is preferable to “e-cigarette”, as we consider this on balance to be more informative. Advertising of such products should not describe them as “smoked”, or use any other descriptor that is misleading and could create confusion with cigarettes.</p>
		<p>CAP and BCAP’s (B/CAP’s) evaluation:</p> <p>B/CAP welcomes the respondents’ support but after consideration have decided that the rule functions better in preventing confusion with tobacco products. The final implemented rule reads as follows:</p> <p><i>“Marketing communications must make clear that the product is an e-cigarette and not a tobacco product.”</i></p> <p>B/CAP notes that the term e-cigarette is now widely used and understood. B/CAP therefore does not consider, nor is it aware of any evidence which shows, that there is consumer confusion about the nature of the product or harm stemming from it that would require B/CAP to mandate specific descriptors for them in advertising. B/CAP further consider that such a provision would effectively force many advertisers to rename their products thereby increasing confusion in the market.</p> <p>Likewise in relation to terminology regarding how the product is used, B/CAP is not currently aware of any evidence which shows that it needs to prohibit particular</p>

			wording, given that this rule requires all ads to make clear that featured products are e-cigarettes and not tobacco products.
4.3	ASH-W	Agree. Therefore recommend that the descriptor 'electronic cigarette' is used in preference to 'e-cigarette'. In addition, terminology or descriptors that may cause confusion, such as 'smoked' or 'smoking' should also be prohibited.	See 8.2
4.4	Mr B	Agree. Products should be referred to as an e-cigarette or electronic cigarette.	See 8.2
4.5	SHWB	Agree. Preference would be towards the term "electronic cigarette" to "e-cigarette", as it provides a more informative description. Consider that descriptions such as "smoked", which might cause confusion with cigarettes should be prohibited.	See 8.2
4.6	TICAP	Agree but rule should be amended to require products which are manufactured by pharmaceutical companies to represent traditional tobacco products (e.g. cigarettes, pipes).	B/CAP do not control the appearance of products themselves.
4.7	LCFT	Agree. In addition it should be strengthened by the inclusion of information that the best option for health improvement is complete cessation.	B/CAP have augmented rule 2 for this purpose but not consider it proportionate to require a compulsory message.
4.8	TCRG	Agree. Consider that the rule should prohibit any descriptor (e.g. smoked, smoking) that could create confusion with tobacco cigarettes.	See 8.2
4.9	NELSA	Agree. to specifically include the words e cigarette or electronic cigarette in their advertising to avoid any misunderstanding of what they are advertising and avoid confusion by the general public. Do *not* support the term "vapouriser" to be used instead of electronic cigarette as this is not understood by the public and the term vapouriser is used to describe a range of humidifying devices as well as in cannabis use.	B/CAP agree.
4.10	CEntSA	Consider there needs to be prominence in any advertisements stating that the product is an e-cigarette so that it is not easily confused with traditional cigarettes.	B/CAP agree and consider the rules already accomplish this.
4.11	CRUK	Agree. Consider that electronic cigarette and e-cigarette are appropriate descriptors. Consider that mandating alternative names may cause confusion. Consider that terms associated with tobacco such as "smoking" should be prohibited.	B/CAP agree. See 8.2
4.12	Healthy Stadia, HOM	Consider that ads should refer to products as an 'e-cigarette' rather than other terms that are sometimes used such as 'vapouriser'.	See 8.2

4.13	NHS Lanarkshire	Agree, but consider that the use of the word “cigarette” be prohibited	See 8.2
4.14	NHS Grampian	Ads should highlight the risks of poisoning and addiction.	See 5.3
4.15	LOTSAs, SELITN	Agree but consider that the rule should relate to visuals as well as any wording. i.e. advertisers should not be able to show an e-cigarette which looks like a tobacco product and then use text to say that it is not.	See 8.2 and 2.6.
4.16	BHF	<p>Concerned about the potential for marketing of e-cigarettes to be confused or strongly associated with tobacco products through the use of descriptors such as “smoked”, or the use of imagery or scenarios that could be associated with smoking. Do not advocate the banning of the description ‘e-cigarette’ on the basis of practicality.</p> <p>However, we do believe the rule could be strengthened to give further guidance on the purpose of electronic cigarettes. We suggest the rule states that ads “must make clear that the product is an alternative to tobacco and ensure there can be no confusion with cigarettes or tobacco products.”</p>	<p>See 8.2</p> <p>See 1.3 concerning the use of “alternative”. Otherwise B/CAP consider that the revised rule achieves this aim.</p>
4.17	RTCA	We agree with the inclusion this rule. Advertising of such products should not describe them as “smoked”, or use any other descriptor (other than the generic name “electronic cigarettes”) that is misleading and could create confusion with cigarettes.	See 8.2
4.18	PHS	Agree with this statement but transfer e-cigarette to electronic cigarette.	See 8.2
4.19	PV	<p>All marketing communications and advertisements must be clear in stating what the product is and what it should be used for.</p> <p>For print advertisements, explicit details on what an e-cigarette is, what its contents are and how it works can be included in a fine print similar to that used in OTC medicine advertisements. This print should also encourage interested parties to seek advice from a healthcare professional, such as a pharmacist, before purchasing one of these products</p>	<p>B/CAP agrees that the nature of the product should be clear.</p> <p>B/CAP does not consider that it is proportionate to require information about product contents or to direct consumers to a pharmacist.</p>
4.20	J&J	Agree but consider that the only way to ensure that there is no indirect promotion of tobacco is to not to include products in the advertisements and to not show packs that overtly use tobacco packaging cues as above. Furthermore the term e-cigarette should not be used in advertising or on packs because it includes the term cigarette and therefore indirectly promotes tobacco. Alternatively these products can be referred as electronic nicotine delivery systems or vapours.	See 2.6 and evaluation of revised rule 2. See also 8.2.

4.21	LCC	Prefer electronic cigarette in all instances and prohibit “smoked”.	See 8.2
4.22	CCC,	Prefer “electronic cigarette” in all instances.	See 8.2
4.23	BrBC, CCC	Agree but suggest the rule also prohibit any descriptor that might reasonably be expected to create confusion with cigarettes.”	See 8.2
	Respondent making points against the proposal:	Summary of significant points:	CAP and BCAP’s (B/CAP’s) evaluation:
4.24	Counterfactual	<p>Disagree. No compelling rationale is given for this in the consultation document. Question what would be lost if an advertiser chose to advertise an e-cigarette brand without saying it was an e-cigarette. Not all advertising is literal and prosaic, and this requirement may constitute an unnecessary barrier to advertising creativity, or campaigns that build over time. Unless some harm would arise from this, it is hard to see why it would be needed.</p> <p>Additionally, there is a danger than the language ‘e-cigarette’ will become obsolete or that different devices will have different descriptive names. It is difficult to anticipate the development of this industry in a way that would make this rule broadly applicable in the present or enduringly applicable in the future.</p>	<p>B/CAP consider that there are significant expectations of regulatory protection in relation to how these products may be advertised. Chief amongst these is the need for ads to clearly differentiate e-cigarettes from tobacco products particularly given that they are often visually similar or even identical.</p> <p>B/CAP and the ASA apply the rules both in spirit and letter. Compliance with the rule can be met by making clear that the product is a vapour product, as opposed to an e-cigarette.</p>
4.25	RCP&UKCTAS	Not all products likely to be promoted and used as substitutes for smoking, in the way that e-cigarettes are at present, will be electronic cigarettes. It may therefore be inappropriate to require this descriptor – rather that the product provides nicotine (if it does) without burning tobacco.	See 4.1 and 4.2.1
4.26	Prof GW	This seems to be unnecessary and to under-estimate consumer knowledge and sophistication. It is unclear what purpose is served by this rule, in that not all advertisements are in all cases explicit about the product.	See 4.1
4.27	NNA	Consider the rule is unnecessary, given that advertisements should be marketing to adult smokers only.	See 4.1

Rule 5: Marketing communications / advertisements must state clearly if the product contains nicotine [or if it does not]. They may include factual information about other product ingredients.

Question 9: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.			
5.1	<p>Respondent making comments on the proposal:</p> <p>ARNS, ASH, ASH Scot, ASH-W, BLF, CAA, ECITA, Fontem, GSK, HAS, ORG.A., Nicoventures, MSSS, SEC, PAGB, RCPCH, SSA, IPA, NNA, RTCA, ADPH, BrBC, CCC, CFNI, SCOT, CIS, CEnTSA, LCC, TSI, SPH, TFF, HAT, HTCSCG, Dr C., SG, LCFT, UKHF, TICAP, TSNW, Rowlands, LOTSA, SHWB, SFCDTCA, TCRG, WSCC, WHOTS, TW, Zandera, Ms B., RSPH, CIEH, WSSS, TC</p>	<p>The organisations on the left agreed with the inclusion of this rule. A summary of significant points follows:</p>	<p>CAP and BCAP's (B/CAP's) evaluation:</p> <p>As a result of the consultation B/CAP agreed that the rule should read as follows:</p> <p>Marketing communications / advertisements must state clearly if the product contains nicotine. They may include factual information about other product ingredients.</p>
5.2	ASH-W	In view of the fact that nicotine is addictive, and is also toxic in certain circumstances, it is important that this information is made clear to the public.	B/CAP agree.
5.3	PHS	Warnings on safe storage of this toxic product also need to be included.	B/CAP considers that a straightforward statement about the presence of nicotine in the product is the most proportionate way to advise people of the risk, given the natural limits of time and space. B/CAP does not consider further ingredient or product safety warnings are necessary in advertising.
5.4	ECITA	Agree completely. However, consider that the rule should state "and / or if it does not" to allow for a specific ad to include a range of products, some of which may contain nicotine and some which may not.	B/CAP consider that the wording of the rule as drafted does not preclude advertisers offering product ranges, provided that it is

			clear that some products contain nicotine.
5.5	LCFT	Advertising should highlight the risk of poisoning.	See 5.3
5.6	HAT	Consider that ads should reference to potential users of 'e' cigarettes being directed into local stop smoking services to optimise their potential for a positive outcome. An example of this could be – 'You are up to 5 times more likely to quit for good with support from your local stop smoking service'. Either the national number could be included at this point or the customer directed to their GP practice for details	See 5.3 Additionally, because smoking cessation and reduction claims are prohibited in ads for non-medicinally licensed e-cigarettes, mandating text about smoking cessation services is, in B/CAP's view likely to cause confusion about lead to a misleading impression about the role of these products.
5.7	SHWB	Advertisements should clearly state that using e-cigarettes containing nicotine is addictive, possible side effects of nicotine and that nicotine is a toxic substance the dangers and risks associated should be highlighted.	See 5.3
5.8	Mr B.	Disagree. Any warnings must be the same size as print copy. The warning should include the fact that the product is for over-18s only and the full risk profile of nicotine use. Products should be kept and stored away from pets and animals and out of reach of children	B/CAP consider that it is reasonable to allow advertisers to choose how to present the information, provided that it is clear. The ASA will judge the acceptability of individual ads when taken as a whole and in context.
5.9	WHOT	Recognising the product safety concerns of Trading Standards Services, socially responsible marketing communications / advertisements would need to highlight safe use through adherence to product instructions, particularly in respect of keeping nicotine refills out of the reach of children, and use of mains electricity to recharge the product	See 5.3
5.10	TW	Suggest disclaimer on the content and addictiveness of nicotine and that they are not suitable for under 18s.	See 5.3
5.11	ECITA	Consider it may be useful to require that a specific, uniform message be included in all ecig ads such as: "Smoking kills. If you are unable or unwilling to quit, you can significantly reduce the harm caused by your smoking by switching to an ecig. Switch today.". This would ensure an anti-smoking message was always included and ensure that ads were socially responsible.	See 5.5
5.13	SFCDTCA	Explicit reference to the fact that nicotine is highly addictive	See 5.3
5.14	SHWB	All ads prominent reference to toxicity of nicotine and store / use.	See 5.3

5.15	NHS Grampian	Consider ads should highlight risks of nicotine addiction and poisoning.	See 5.3
5.16	TSNW	Advertisements should recognise that nicotine is a poison and therefore should be carefully used and stored so as to protect, in particular those who would be most vulnerable to its dangers	See 5.3
5.18	STCPAB	<p>Agree but consider the rule should require factual statements about other product ingredients because some e-cigarettes contain additives similar to those that are found in mainstream cigarettes consumers need to be made aware of these so they can make an informed choice.</p> <p>Consider the rule should prohibit the promotion of flavours that would appeal to young people. Local anecdotal evidence suggests that flavours such as vanilla, cappuccino, red bull and sugar have played a part in the popularity of e-cigarette use amongst young people.</p> <p>Also advertising of e-cigarette products should not describe them as “smoked”, or use any other descriptor (other than the generic name “electronic cigarettes”) that is misleading and could create confusion with cigarettes. Also – state not suitable for non-smokers, and children under 18 years of age.</p>	<p>See 5.3</p> <p>See 1.14</p> <p>See 8.2</p>
5.19	SFNA	Agree. Also prohibit statements that refer to other product ingredients (e.g. fruit, menthol, herbal) as being healthier than nicotine containing products.	See 3.7
5.20	Cygnat	Agree. However, we would suggest that the wording in square brackets be deleted, since it goes beyond what the current legal framework requires (namely to identify clearly products which contain nicotine).	<p>B/CAP agree. The committees consider that it is important for nicotine-containing products to be identified. However, they consider it disproportionate to require products that do not contain nicotine to define themselves by its absence, in all instances.</p> <p>B/CAP are not aware of a current legal provision which require nicotine-containing consumer products to make that fact clear in advertising.</p>
5.21	LOTSAs	Yes and the rules should apply to all e-cigarette and e-shisha products which do not contain nicotine	B/CAP agree. It is the committees’ intention that all such products are within scope of these rules.
5.22	RCP&UKCTAS	Yes. It would be helpful also to know whether the product actually delivers nicotine, that is, whether the user receives a dose of nicotine. The available	See 5.3

		evidence suggests that some devices do not achieve this, in which case consumers buy the product, find it ineffective, and go back to smoking. It is also appropriate to inform consumers that nicotine is addictive.	
5.23	NHS Lanarkshire	Yes it should state it contains nicotine and the maximum dose that should be taken in a specified time period. It should also state this product contains nicotine (if appropriate) which is a highly addictive substance therefore please use with caution. In high doses nicotine is toxic therefore please keep this product away from children. This product should not be used by women who are pregnant due to insufficient evidence regarding their use in pregnancy.	See 5.3
5.24	J&J	Agree. Furthermore the nicotine amount (e.g: 16mg/ml) in the products should be stated as well. Should state if/where there are contents/ingredients that may do harm or be considered to pose a risk to health, including the swallowing of the liquid content etc. (Dramatic rise in the number of calls made to poisons centres about e-cigarettes, PJ Online, 10th April 2014).	See 5.3
5.25	Nicoventures	As well as being able to give factual information about product ingredients, advertisers should be able to give factual information about product characteristics (for example “no tobacco” and “no smoke”). We therefore suggest an additional sentence is added to the rule: “They may also include factual information about the product and its characteristics.”	See 3.3
5.26	TSNW	If it does contain nicotine, we believe that the communication/advertisement should be clear of the highly addictive and poisonous nature of nicotine	See 5.3
5.27	NSTAG	We agree with the inclusion and wording of this rule, including the words in square brackets, but replace ‘may’ with ‘must’ to read: Marketing communications / advertisements must state clearly if the product contains nicotine [or if it does not]. They must include factual information about other product ingredients.	See 5.3
5.28	SFSW	We agree with the inclusion and wording of this rule, including the words in square brackets. We also feel it may be necessary to include factual information on other ingredients.	See 5.3
5.29	CEntSA	Consider that this needs to be the case. Other information needed to be clear and in the same field of vision. Information should not be ambiguous and not inadvertently promote any unproven health benefits.	B/CAP agree.
5.30	PHE	Agree. The public health implications of insufficient nicotine delivery should not	See 5.3.

		be ignored. Smokers may find their attempts to stop or reduce smoking undermined by products which fail to reduce nicotine withdrawal adequately. It is important that users, whether they are seeking or avoiding nicotine, are provided with the necessary product information to enable them to make an informed choice.	
5.31	PV	Serious risks of poisoning exist concerning the accidental ingestion of cartridges by children and pets. Where possible, all advertising and packaging should reflect this concern in line with the Tobacco Control Directive.	See 5.3. B/CAP do not have a regulatory role in relation to product packaging, except where it is visible in advertising.
5.32	ASH Scot, BHF, SFN, PHS	Where e-cigarettes contain nicotine, there should be a requirement to state that nicotine is addictive.	See 5.3.
5.33	WG	We agree that advertisements must clearly state whether e-cigarettes contain nicotine. The warning should use similar wording as has been included in the Tobacco Products Directive: "This product contains nicotine which is a highly addictive substance. It is not recommended for use by non-smokers or those under 18". Non-nicotine containing e-cigarettes should include a message that these products do not include nicotine. Consideration should also be given to including a warning that these products are not suitable for under 18s.	See 5.3 and 5.20
5.34	CRUK, CMTA, DCTA, Healthy Stadia, Leicester Stop Smoking Service, HOM, TFF, RCR	Agree but consider that the rule should require a statement that nicotine is highly addictive (in ads for products which contain nicotine).	See 5.3
5.35	FPH	Advertising should clearly state the addictive nature of nicotine and that these products are intended to deliver that highly addictive substance to addicts, in a less harmful way than the currently used mechanism. Advertising of this addictive substance should be limited in the same way as other legally available but addictive substances.	See 5.3
5.36	RPS	Yes advertisements should always state if nicotine is present but in addition all known ingredients should be listed. This is important for allergy sufferers and to aid investigations into any potential side effects.	See 5.3
5.37	Boots UK	Agree, unless the product advertised is a licensed medicine, when any claims should be permitted which are compatible with its marketing authorisation and	B/CAP agree

		product licence	
5.38	NHS Lanarkshire	A warning should be added to adverts stating that the product contains nicotine (if appropriate) which is a highly addictive substance therefore please use with caution and please keep away from children. This product should not be used by women who are pregnant due to insufficient evidence regarding their use in pregnancy.	See 5.3.
5.39	NELSA	Ads should be required to include a statement on the addictiveness of nicotine and that “the product contains nicotine which can damage your health” to counteract the view that e-cigarettes are healthy when in fact they are only healthier.	See 5.3.
5.40	CMTA, FPH, NHS Grampian	Consider mandating info about other ingredients, for examples those shown to be harmful.	See 5.3.
5.41	Counterfactual	No. This is unnecessary, and it is not clear what harms it is supposed to prevent. There is no analogous requirement to state that alcohol or caffeine products contain alcohol or caffeine respectively. It is very unlikely that a person would be able to buy e-cigarettes unaware that they contain nicotine - this is addressed on the packaging.	In B/CAP’s view nicotine-containing e-cigarettes present a clear potential for harm because of their relationship with tobacco and because of their potential to act as a gateway to nicotine use for current non-users. In that light, and bearing in mind the novel nature of the product, B/CAP consider it appropriate to require marketers to make clear when their products contain nicotine.
5.42	PML	Nicotine is an addictive substance and products containing nicotine should be clearly labelled as such. This would be also consistent with the requirements of the revised EU Tobacco Products Directive.	B/CAP agree but do not seek to pre-empt the Tobacco Products Directive.
5.43	Prof GW	Unnecessary and underestimates consumer knowledge. It is important that communications may include information about other ingredients including flavours, and about other product and device characteristics.	See 5.41
5.44	SFNA	Advertising should reference the need to store electronic cigarette and associated equipment safely stored away from pets.	See 5.3
5.45	CIEH	Some electronic cigarette products emit substantial quantities of visible vapour and the addition of flavourings and scents can give rise to odours which are objected to by other people and give rise to complaints. Advertisements should be required to state whether or not visible vapour will be produced and whether or not odours will be emitted. Until such time as the safety of the use	See 5.3 and 8.4

		<p>of these products can be assured, including the re-charging of batteries, advertising should contain reference to the safety precautions of using electronic cigarette products including not using them in areas where combustible products and used or stored, e.g. explosives, and where points of ignition are prohibited e.g. in proximity to flammable liquids and gasses.</p>	
--	--	---	--

Rule 6: Marketing communications / advertisements must not encourage non-smokers or non-nicotine-users to use e-cigarettes.

<p>Q10: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.</p> <p>Q11: Do you consider that this rule is proportionate? If you consider that advertising of e-cigarettes expressly to non-users of nicotine is acceptable or if you would prefer a rule which required all marketing to be explicitly addressed only to existing nicotine users please provide your comments and any evidence.</p>			
6.1	<p>Respondent making points in favour of the proposal:</p> <p>ARNS, Boots UK, CAA, CMTA, DCTA, Fontem, GSK Nicoventures, NELSA, NHS Grampian, SEC, CEnTSA, PV, RCR, RPS, Rowlands, PHS, Zandera,</p>	<p>The organisations listed on the left agreed with the inclusion of the rule as proposed.</p> <p>Summary of significant points:</p>	<p>CAP and BCAP's (B/CAP's) evaluation:</p> <p>B/CAP are implementing the rule as proposed.</p>
6.2	<p>ASH, ASH Scot, ASH-W, CRUK, FPH, GSK HAS, Healthy Stadia NHS Lanarkshire, MSSS, RCPCH, SSA, RTCA, ADPH, BHF, BrBC, CCC, CFNI, SCOT, CIS, LCC, TSI, PHE, TFF, HAT, WG, HTCSG, Dr C., SG, LCFT, RCR, UKHF, SELITN, J&J, TSNW, SFNA, SFN, NSTAG, STCPAB, SFSW, SFCDTCA, TCRG, WSCC, WHOTS, Ms B., RSPH, CIEH, WSSS, TC</p>	<p>Consider that this rule (and others, as relevant) should require electronic cigarettes only to be advertised and promoted as an alternative to tobacco.</p> <p>Do not consider that it is sufficient to set a principle that such adverts "must not explicitly encourage those who do not currently use nicotine to start". <i>Implicit</i> promotion to intended target groups of consumers is of course an important and well understood part of advertising and marketing, and we therefore wish the rules, taken together, to be so worded as to make it as difficult as possible for any electronic cigarette manufacturer to target those who do not currently use tobacco. Therefore, we would wish to revise as follows: "Rule 6: Marketing communications / advertisements must not target either explicitly or implicitly, non-smokers or non-nicotine users to use electronic cigarettes or other nicotine containing products."</p>	<p>See 1.3</p> <p>B/CAP consider that the rule already achieves this. Although B/CAP do not consider that it is necessary for the rule to require all individual ads to be actively addressed to existing smokers / nicotine users, it is B/CAP's intention to prevent any suggestion (implicit or explicit) that non-smokers or non-nicotine users should use e-cigarettes. It will be necessary for the ASA to judge the acceptability of individual ads when taken as a whole.</p>
6.3	<p>Prof GW</p>	<p>Marketing should be targeted at smokers rather than non-smokers and non-nicotine users. The definition of smoker should also include recently stopped smokers, ex-</p>	<p>See 6.2</p>

		smokers wishing to avoid a relapse to smoking, and ex-smokers who are using other nicotine containing products including e-cigarettes.	
6.4	Mr B	Agree. But consider images of e-cigs will encourage never and former users to use.	See 2.6
6.5	SPH	We would like to see revised wording to this rule so that ads do not encourage or target non-smokers or non-nicotine users to use electronic cigarettes	B/CAP consider that the rule already achieves this.
6.6	Counterfactual	Disagree. "Encourage" is too broad as it is impossible to stop a given advert having some impact outside its target audience. Any adult has the right to buy these products and it is quite possible that they will appeal to ex-smokers, who miss their nicotine consumption and would like to have it back but with minimal risk. Should not be too concerned about some 'spillover' of advertising, as adults should be free to make choices about using these products and should not be infantilised by excessive caution in advertising. However, it should not be acceptable for a company to actively pursue non-nicotine users - the code should focus on the intent of the advertiser, not a peripheral outcome and therefore prevent the targeting of NS / NNU.	See 6.2
6.7	SHWB	Agree but reiterate that all electronic cigarettes should be required to be advertised and promoted as an alternative form of tobacco and not directed to non-smokers.	See 1.3
6.8	SFNA	Rule or guidance should also not encourage people to increase their current use of nicotine.	B/CAP consider that a rule based on nicotine consumption by quantity would be unlikely to be helpful either to marketers when preparing ads or the ASA when adjudicating on related complaints.
6.9	TW	Agree with this rule if the product contains nicotine. If the product does not then the rule is irrelevant. Presents the question of whether inhaling vapour which does not contain nicotine has the potential for harm e.g. migration to nicotine or tobacco. Product sold without fluid can be sold as a personal vaporiser without need to associate to tobacco or electronic cigarette legislation. It becomes a regulated NCP when nicotine containing fluid is applied for use. If fluid contains no nicotine there is no need for regulations to apply.	See 15.1
6.10	RPS	Agree; the rule is entirely proportionate. E-cigarettes contain nicotine which is an addictive substance and has several physiological effects on the body including raising of blood pressure which can contribute to serious cardiovascular health problems. Advertising should not encourage any increases in the use of addictive substances to the general public, particularly when it may lead to an increase in tobacco smoking itself.	B/CAP agree

6.11	LOTSAs	Advertising should be explicitly addressed only to existing nicotine users. There is clear evidence that e-shisha pens are very popular with young people of school age. Most e-shisha pens do not contain nicotine but some do and others incorrectly advertise they are nicotine free when in fact they contain nicotine. Concerned about sponsorship of sports teams, for example, by e-cigarette firms which target young people. These link the products with a healthy, trendy, cultural or glamorous image.	See 5.3
6.12	J&J	Targeting advertising of e-cigarettes to non-users of nicotine is not acceptable. Advertisements should include a legal superscript to this effect, e.g. "only for existing/established smokers"	B/CAP agree but do not consider that additional text is proportionate.
6.13	TICAP	The uptake of vaping by never smokers is negligible. The proposed wording of the rule could provide mechanisms to prohibit all advertising in the sector. Adults should be allowed to make their own informed choices and, bearing in mind how harmless e-cigs are, little damage will result. The interpretation of this rule, if included at all and however worded, should be similar to the restrictions expected for caffeinated and alcoholic beverages. Prefer the rule only to prohibit deliberate targeting of non- smokers / non-nicotine users.	See 6.2
6.14	PHE	While it appears there is currently very limited use of electronic cigarettes by never-smokers, it will be important to clearly position the use of these products as an alternative to smoking and not to encourage their use for any other purpose. However, we recognise that prohibiting health claims and lifestyle claims may so reduce the scope for advertising NCPs that their capacity to replace smoking is diminished. Consequently, we do not believe that advertising should be prohibited simply because it presents NCP use as socially desirable change for smokers.	See 1.3
6.15	ASH-W	Agreed. In view of the fact that nicotine is addictive, and is also toxic in certain circumstances, it is important that this information is made clear to the public.	See 5.3
6.16	CEnTSA	Agree with the rule. Note that recent work in the North East/West found that some school children are using the products even though they have not smoked traditional cigarettes.	B/CAP agree.
6.17	ECITA	Agree but consider the wording could be improved to prohibit only explicit encourage of non-nicotine users / non-smokers. We are pleased to note that the Committees recognise that there will inevitably be some non-nicotine-user uptake, but that this is highly unlikely to cause a net public health harm. Indeed, it is likely that this will result in a net public health gain, but, mindful of the need for social responsibility, we believe that this rule is an entirely proportionate	See 6.2

		response to this situation.	
6.18	Fontem	Agree but consider that the rule should only prohibit explicit encouragement of non-nicotine users / non-smokers. Our priority in the context of advertising and communications is ensuring that we can communicate as openly and transparently as possible with our consumers, to enable them to make informed choices about our products. We can only do this if advertising regulations allow us to convey information that is accurate and appealing to consumers who are searching for a viable alternative to tobacco cigarettes.	See 6.2
6.19	Cygnet	Agree, but consider that the word “encourage” alone is too ambiguous. The rule should only prohibit explicit encouragement of non-nicotine users / non-smokers (or targeting thereof).	B/CAP consider that the rule already achieves this.
6.20	GSK	Agree with the inclusion and wording of this rule; we would expect that visuals showing people deriving pleasure from or looking cool or glamorous using e-cigarettes to be prohibited under this rule.	See 1.9
6.21	Healthy Stadia	It must be made as difficult as possible for any electronic cigarette manufacturer or brand holder to target those who do not currently consume conventional cigarettes either explicitly or by more subtle means, for example through sponsorship of professional sports clubs, sports events, or through endorsement of e-cigarettes by current or ex-professional sports players.	See 1.35
6.23	IPA	Yes, we agree with the inclusion of this rule, though we would suggest that the wording be amended to “...must not <u>seek to</u> encourage...” (or similar). An advertiser should not be held in breach of the rule if a marketing communication/advertisement inadvertently encourages a non-smoker/non-nicotine-user to use e-cigarettes.	See 6.2
6.24	ORG.A.	Whilst we can understand BCAP’s rationale for the proposed inclusion of this rule, it is not clear to us whether this rule is strictly necessary –any marketing messages that encourage non-smokers or non-nicotine-users to behave in this way would fall foul of the overarching rule on social responsibility.	B/CAP agree but provide this and the other rules to offer more specific criteria as to responsible advertising.
6.25	Nicoventures	Agree with the sentiment of the proposed rule although believe the reference to “encourage” is problematic on account of being too broad as it is impossible to prevent an advertisement having some effect outside of its intended audience. Consider the rule should only prohibit deliberate targeting of NS / NNU. However, in order to be socially responsible, would also support the notion of requiring all advertising to explicitly address existing smokers and / or existing nicotine users.	See 6.2
6.26	NELSA	We agree that this rule should be included but wonder how effectively it can be policed	See 1.35 and 6.2

		since a lot of advertising will be seen equally by smokers and non-smokers. The sponsorship and promotion within sports venues for example including on team kit will be seen by non smokers equally as smokers who will see their role models associated with the product. In such circumstances, the majority of people seeing any advertising will be non smokers.	
6.27	NHS Grampian	The products should be expressly marketed at existing smokers but should recommend using medically regulated products as a best option.	See 6.2. B/CAP consider it disproportionate to require an additional statement recommending medical products. See also 5.3
6.28	NNA	In the interests of public health, we wish to see e-cigarettes promoted in a way that makes them highly desirable to smokers (whether they wish to quit nicotine use or not). In doing so there is a possibility that some non-smokers may also be attracted to them. There is a need to strike a pragmatic balance between the need to maximise the former, whilst minimising the latter. The health impacts of a non-smoker using e-cigarettes are small, compared to smoking combustible tobacco. This should be reflected in the extent to which “broad-based appeal” is permissible under these rules. There is a risk that this rule may be applied in a disproportionate way. For example, research shows that flavours (other than tobacco flavours) are a significant driver towards smokers switching. However, it is difficult to talk positively about flavour without, potentially, appealing to non-smokers.	See 6.2
6.29	PAGB	All marketing should be explicitly addressed only to existing nicotine users. Agree with the wording of this rule but we think that this needs to be expanded to include rules prohibiting the glamorisation of vaping. Suggest that there should be no normalisation or glamorisation of the use of e-cigarettes as that may encourage use by non-smokers. Consider that the rules here should closely reflect the following BCAP Code Rules relating to alcohol; 19.3, 19.4, 19.5, 19.6, 19.7, 19.8, 19.9, and 19.13. Whilst there is a specific rule for the protection of children we believe that the endorsement of e-cigarettes by celebrities (19.15.2) or health professionals should be prohibited for adults as well. “Safer” claims should be regarded as health claims and therefore will be prohibited for e-cigarettes unless the product is licensed for those purposes by the MHRA. It is notable that in the therapeutic indication of medicinal NRT products in the UK there is a reference to them being licensed for use “as a safer alternative to smoking”.	See 6.2, 1.9 and 3.7
6.30	RCP&UKCTAS	Examples from the history of tobacco advertising demonstrate that commercial companies run rings around this kind of statement. Rule needs to be reworded to prevent ads being “likely to encourage” or “having the effect of encouraging”.	See 6.2

6.31	PML	<p>We believe it would be appropriate to require information in advertising and marketing materials that these products are not for non-smokers and non-nicotine users and to warn about the risk of addiction.</p> <p>Subjective rules such as what ‘encourages’ non-smokers or non-nicotine users (apart from explicit statements to such populations) may be difficult to enforce in an effective manner. The rule should prohibit advertisements that explicitly and expressly target non-smokers or non-nicotine users. We do not believe that advertising expressly to non-users of nicotine-containing products is appropriate and believe that prohibiting advertisements that expressly or directly encourage non-smokers or non-nicotine users to use e-cigarettes is proportionate. Further restrictions do not appear to be warranted. With no rules in place to date, evidence from the UK has shown that e-cigarettes are used almost entirely by smokers who switch from cigarettes, while the use among never-smokers is negligible. For example, recently ASH UK issued reports on the use of e-cigarettes in the UK and concluded that there was little evidence than never-smokers were using e-cigarettes</p>	<p>See 5.3</p> <p>B/CAP agree.</p>
------	-----	---	------------------------------------

Rule 7: Marketing communications / advertisements must not link e-cigarettes with gambling, alcohol or illicit drugs.

Question 12: Do you agree with the proposal to prohibit linking e-cigarettes with illicit drugs? If not, please explain why and provide any suggestions you may have for improvement.

Question 13: Do you consider that alcohol should be included in this rule? Please explain why and provide any evidence you consider relevant.

Question 14: Do you consider that gambling should be included in this rule? Please explain why and provide any evidence you consider relevant.

7.1	<p>Respondent making comments on the proposal:</p> <p>ARNS, ASH, ASH Scot, ASH-W, BLF, Boots UK, CMTA, DCTA, Fontem, FPH, HAS, Healthy Stadia, NELSA, NHS Lanarkshire, MSSS, PAGB, RCPCH, SSA, ADPH, BHF, CFNI, RCP&UKCTAS, SCOT, CIS, CEnTSA, LCC, TSI, SPH, HOM, PHE, TFF, HAT, HTCSG, Dr C., SG, LCFT, RCR, RPS, SELITN, J&J, TSNW, SFNA, Rowlands, SFN, LOTSА, PHS, STCPAB, SFCDTA, TCRG, WSCC, WHOTS, Mr B. BMA, Ms B., RSPH, CIEH, WSSS, TC</p>	<p>The organisations on the left agreed with the rule as proposed by B/CAP (save for the need to include other nicotine containing products where that view was expressed). A summary of significant points follows below:</p>	<p>CAP and BCAP's (B/CAP's) evaluation:</p> <p>After review of consultation responses, B/CAP decided not to implement this rule. Please see the evaluation below.</p> <p>B/CAP made clear in the original consultation document that they had concerns about whether this rule was necessary because any e-cigarette advertisement which features or refers to alcohol or gambling already has to comply with the relevant provisions in the Codes, as well as the rules in this section. B/CAP have therefore had to consider whether the act of co-locating e-cigarettes with the responsible depiction of alcohol or gambling is so irresponsible as to require an outright ban. B/CAP's consideration is that such a restriction is disproportionate.</p> <p>While B/CAP do not and cannot pre-approve specific creative treatments, it is their view that there are likely to be ways in which ads may feature an e-cigarette in an environment in which alcohol is being consumed or gambling conducted without being harmful. This is particularly the case given that, as some respondents have noted, e-cigarettes have a particular appeal as an alternative to tobacco in such environments.</p> <p>In B/CAP's view it is highly unlikely that any ad will</p>
-----	--	---	--

			be able to link e-cigarettes with illicit drugs in a way that is responsible and the ASA will have the capability to deal with any such marketing under the general responsibility rule.
7.2	CAA	Agree in relation to illicit drugs, but not alcohol or gambling.	See 7.1
7.3	Boots UK	Agree, unless the product advertised is a licensed medicine, when any claims should be permitted which are compatible with its marketing authorisation and product licence	B/CAP agree.
7.4	SFNA	Agree but consider including legal highs.	See 7.1. B/CAP consider that any references to legal highs can be investigated by the ASA under the general responsibility rule.
7.5	SHWB	No advertisements or communications should present electronic cigarettes in such a way as to glamorise and hence promote their use to non-tobacco users. We of course agree that electronic cigarettes should not be associated with illegal drugs or gambling.	See 7.1 and 1.9
7.6	RCR	Yes – gambling / alcohol and nicotine are both addictive and have major impact on health and social welfare and should not be linked in any way. Addictive behaviours should never be encouraged.	See 7.1
7.7	TW	Agree for drugs. Not for alcohol or gambling.	See 7.1
7.8	Prof GW	Agree on drugs not on alcohol. No view on gambling but there should not be a ban on showing e-cigarettes in indoor / outdoor settings e.g. sport events including where gambling might occur.	See 7.1 and 1.9
7.9	Zandera	Agree in relation to illicit drugs and gambling. Alcohol should be included only to prohibit direct links but not so as to portray the use of e-cigarettes in and around bars / social situations.	See 7.1
7.10	UKHF	Agree in relation to illicit drugs and alcohol.	See 7.1
7.11	BrBC, RTCA	Agree in relation to illicit drugs and gambling. Presenting a connection with alcohol would be acceptable if and only if this is done in a way that helps to promote the electronic cigarette to existing tobacco users as an alternative. This is helpful because social drinking is well associated with failed attempts to cut down on or quit smoking.	See 7.1
7.12	Fontem	Agree in relation to illicit drugs. Linking e-cigarettes with perceived	See 7.1

		“risk-taking” behaviour such as gambling or immoderate drinking of alcohol could result in the product appealing to an under-18 audience, which runs counter to our commitment to a responsible marketing approach of only targeting informed adult consumers. However, linking e-cigarette use with responsible drinking behaviour may be appropriate in certain, adult-based settings.	
7.13	IPA	Agree for illicit drugs only.	See 7.1
7.14	NSTAG	Agree that electronic cigarettes should not be associated with illegal drugs or gambling. Consider that the rule should be revised to prohibit the glamorisation of the products and hence promote their use to non-tobacco users. For the time being (until their electrical safety can be assured) we agree that e-cigarettes should not be marketed with alcohol due to the links with the devices and fires, whether it is the charger or the actual e-cigarette device.	See 7.1 and 1.9
7.15	TICAP	Agree re drugs. Alcohol is a legal product and one of the great advantages of vaping is that it can be consumed indoors without either harming or offending anyone else. The linkages proposed in the rule should be permitted/forbidden equally for all three products listed. i.e. if the rule is accepted, then alcohol should not be linked with gambling either, and the application of the rule equally applied. In practice, this would mean that if an ad for a casino is allowed to show people drinking, then it should also be allowed to show people vaping. If vaping itself is next to harmless then it follows that second hand vapour is harmless too.	See 7.1
7.16	J&J	Even small amounts of alcohol have been shown to increase the pleasurable effects of nicotine thereby encouraging people to smoke more when drinking. Showing the use of e-cigarettes in situations where alcohol is being consumed will serve to further normalise the link between nicotine and alcohol which is undesirable.	See 7.1
7.17	SFSW	We agree with the inclusion of this rule revised to include other nicotine containing products. While we do not think use of alcohol in promoting e-cigarettes is necessary or advisable, we do not believe there is a strong justification to prohibit the appearance of alcohol in a promotion for e-cigarettes, so long as the other CAP/BCAP rules for marketing alcohol and for marketing e-cigarettes are fully adhered to. We would be concerned if the promotion of e-cigarettes was used in the context of a pub, bar or restaurant or any context which falls under the	See 7.1 and 1.19

		smokefree legislation banning the use of tobacco cigarettes in enclosed public spaces. Although there is no legal ban on such use, ads showing the use of e-cigarettes in such spaces could mislead the public.	
7.18	TFF	Children often see the latter activities as glamorous, any promotion which suggests linkages to such attractive pursuits to children risk the e-cigarettes benefiting from the halo effect.	See 7.1 and 1.9
7.19	PML	Agree in relation to illicit drugs. Any other restrictions on the content of advertisements should be carefully considered based on the specific nature of the product. E-cigarette manufacturers should be able to depict e-cigarettes in realistic situations where e-cigarette use is not prohibited.	See 7.1
7.20	PV	Agree in relation to illicit drugs. Showing e-cigarettes in conjunction with alcohol is likely to glamorise the products, associate them with pleasure and make them seem more appealing to non-smokers. We would advocate the prohibition of advertising which depicts the use of these devices in public places, such as bars and restaurants, to ensure that their use does not undermine smoking prevention and cessation strategies by reinforcing the normalcy of cigarette use.	See 7.1 and 1.9 See 1.19
7.21	WG	Advertising of e-cigarettes should not portray the use of illicit drugs in a positive light. The marketing communications guidelines for alcohol and gambling already makes it clear that advertising should be socially responsible and should not be targeted at children and young people under the age of 18. Any advertising which links e-cigarettes to alcohol and gambling needs to ensure there are also no breaches of these current guidelines. Links to the use of e-cigarettes should also not breach the current advertising guideline that drinking alcohol is not a key component of the success of a social event. The rules should also consider whether depicting the use of e-cigarettes in pubs and whilst drinking in an advert should be permitted as this reinforces traditional smoking behaviour. Allowing advertising in these settings could also impact on attempts by some pubs, to introduce voluntary bans on the use of e-cigarettes on their premises.	See 7.1
7.22	Counterfactual	Agree in relation to illegal drugs only. The over-arching requirement not to advertise in a way that is socially irresponsible should cover any possible detriments arising from associations with alcohol and gambling. It is important that the new code does not curtail commercial	See 7.1

		freedoms without a proper justification.	
7.23	CRUK, CCC	Agree in relation to illicit drugs and gambling. Consider there is not a strong justification for precluding responsible advertising executions which feature alcohol.	See 7.1
7.24	PAGB	Agree in relation to illicit drugs. Also agree in relation to alcohol and gambling. Agree that there may be responsible advertising executions which feature e-cigarettes in an environment in which alcohol is being consumed or in a gambling environment.	See 7.1
7.25	Cygnnet	<p>Disagree with the insertion of this rule as it goes beyond what is necessary and appears to be based on an unfounded assumption that electronic cigarettes are associated with illicit drugs, gambling and alcohol. It is unlawful in the United Kingdom to promote or encourage the use of illicit drugs in any event. The association with gambling and alcohol also appears arbitrary. There is no evidence that suggests that the use of electronic cigarettes would promote the use of alcohol or gambling, and nothing to suggest that additional regulation is required beyond the separate rules already in place in respect of alcohol and gambling.</p> <p>One way of ensuring that ads are appropriately targeted is to use adult themes, such as showing the product being used in adult-only venues, such as bars and casinos. We therefore cannot see any basis for such treatments being prevented.</p>	See 7.1
7.26	ECITA	Agree in relation to illicit drugs. However, neither gambling nor the consumption of alcohol is an illicit activity. Consider it would be entirely appropriate and potentially useful to be able to link the use of ecigs with the sensible consumption of alcoholic drinks, particularly because the association for smokers is so intense. Useful for ads to demonstrate that smokers can derive the same (or better) benefits from using an ecig instead of smoking in those social contexts. This will help gain the maximum public health benefits from more smokers switching to the demonstrably safer alternative.	See 7.1
7.27	ORG.A.	Can already be covered under social responsibility. We agree in principle that advertising should not link e-cigarettes with drugs or gambling. However, we find the reference to "illicit drugs" to be somewhat incongruous, given the general requirement in the BCAP code for compliance with the law.	See 7.1

		<p>It is not entirely clear to us what it means to "link" the use of e-cigarettes with alcohol. We note that alcohol advertising is permitted to show the use of alcohol in (e.g.) a bar, similarly gambling within a casino setting, so it is not clear why it is inherently inappropriate to show an e-cigarette in the same context. If, for instance, BCAP is concerned that showing e-cigarettes in certain contexts might "glamorise" their usage, then this should be made clear in the Rule.</p> <p>If BCAP retains this rule, we consider that it would benefit from further clarity and guidance to ensure that licensees and Clearcast are able to ensure clear compliance with the rules.</p>	
7.28	Nicoventures	Agree in relation to illicit drugs. Consider that an ads should be allowed to contain incidental and responsible depictions of social environments such as a bar where alcohol may be visible, or an environment in which gambling is taking place.	See 7.1
7.29	NHS Grampian	Agree. Since all of these are harmfully addictive adverts should highlight the harms arising from using them together.	See 7.1
7.30	STCPAB	Agree, the harms of the linked activities are well documented and should avoid glamorisation.	See 1.9
7.31	NNA	Agree in relation to illicit drugs and gambling (but should be allowed to be shown at sporting events). Alcohol should be allowed.	See 7.1
7.32	CCC	We consider that a principle should be applied in a revised wording of this rule, that no advertisements or communications should present electronic cigarettes in such a way as to glamorise and hence promote their use to non-tobacco users.	See 1.9
7.33	GSK	Agree with the proposal but agree that there could be responsible advertising executions which feature alcohol or gambling.	See 7.1
7.34	SEC	Agree in relation to illicit drugs but have no issues with responsible depiction of alcohol or gambling.	See 7.1

Rule 8: Marketing communications / advertisements must not link e-cigarettes with activities or locations in which using them would be unsafe or unwise; such as driving.

<p>Question 15: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.</p> <p>Question 16: Are there any other situations, other than driving, in which you consider that e-cigarette use is so demonstrably harmful that their depiction in advertising should be prohibited?</p>		
8.1	<p>Respondent making points in favour of the proposal:</p> <p>ARNS, ASH, ASH Scot, ASH-W, Boots UK, DCTA, Fontem, FPH, Healthy Stadia, HSA, Nicoventures, NELSA, NHS Lanarkshire, MSSS, NHS Grampian, SEC, SSA, RTCA, ADPH, BHF, BrBC, CCC, CFNI, RCP&UKCTAS, CEnTSA, LCC, SPH, PV, HOM, PHE, TFF, HAT, HTCSCG, Dr C., SG, LCFT, RCR, UKHF, SELITN, TSNW, SFNA, Rowlands, PHS, NSTAG, SHWB, STCPAB, SFSW, SFCDTA, TCRG, TW, Prof GW, Zandera, Ms B., RSPH, CIEH, WSSS, TC</p>	<p>The organisations listed on the left agreed with the inclusion of the rule.</p> <p>CAP and BCAP's (B/CAP's) evaluation:</p> <p>After consideration of consultation response, B/CAP decided not to implement this rule. Please see the evaluation, below, for more information.</p> <p>B/CAP made clear in their original consultation document that they were proposing this rule on a precautionary basis, but were having difficulty in identifying specific advertising executions that might need to be included in the rule.</p> <p>While B/CAP welcome the feedback provided by respondents, they do not consider that any of those specific suggestions are so unambiguously harmful in all instances that they need to be precluded in the wording of the rule.</p> <p>B/CAP were also mindful that both their Codes already contain rules which prevent anything that is "likely to condone or encourage an unsafe practice" (CAP) or "prejudice health and safety" (BCAP). With that protection already in place and without being able to identify any necessary specific wording for the rule, B/CAP consider that the rule is unnecessary and have elected not to implement it.</p>

8.2	ASH Scot	ASH Scotland would add that communications and advertisements should also be prohibited from stating or implying that the use of e-cigarettes is permitted in all indoor public places (e.g. through use the statement that they can be 'used anywhere'). In reality some premises have policies to restrict e-cigarette use in order to more easily manage enforcement of the ban on smoking tobacco cigarettes in indoor public places. It would be undesirable for these policies to be undermined through marketing messages.	See 8.1 and 1.19
8.3	Zandera	There is no scientific evidence that the exhalate vapour of e-cigarettes causes harm to public health and correspondingly we believe it's important that any restrictions on advertising & marketing of e-cigarettes, and their use in public places, is determined by the scientific evidence as and when it is available and has been accepted as the basis for such bans on use in public places comparable to smoking.	See 8.1 and 1.19
8.4	LOTSAs, SELITN	Yes. Recently the use of an e-cig in a hospital environment caused an explosion. As the quality control of most products is non-existent there is a high risk of explosions and fires in any setting. This is particularly true with rechargeable e-cigs where the charger and the battery are generally of very poor quality. Also any settings where young children are present or there is a fire risk from flammable products. Recent incidents with batteries and chargers has highlighted the potential risk of fires when products are left unattended so should not be used in bed.	See 8.1. B/CAP do not have a regulatory role in ensuring product safety but understand that marketers do have various obligations under legislation. While B/CAP are mindful of the respondents' concerns, they do not consider that these are issues that can be effectively dealt with by warnings in advertising.
8.5	WSCC	Agree. Workplaces (safety concerns / fire hazard). Situations where children / young people are involved.	See 8.1 and evaluation of proposed rules 9 and 10, below.
8.6	Mr B.	Prohibit ads that show their use around under 18 / 25 year-olds. Not suggest they may be used anywhere.	See evaluation of proposed rules 9 and 10, below.
8.7	J&J	In addition to driving, being in charge of other transportation such as aircraft or boats, being in charge of machinery or being engaged in sporting activities	See 8.1
8.8	Prof GW	Agree. Like smoking / mobile phones; situations where it may distract the user.	See 8.1
8.9	SFNA	Agree. Should consider in-car charging / refilling.	See 8.1
8.10	WG	Agree. the use of dangerous machinery or other activities in the workplace which require a high level of concentration. This would ensure consistency with the advertising guidelines for alcohol which do not allow advertising to show drinking whilst using machinery. If as a result of the Public Health Bill White	See 8.1

		Paper Consultation, the Welsh Government chooses to ban the use of e-cigarettes in public places, the depiction of the use of e-cigarettes in areas covered by the ban, should not be depicted in adverts for use in Wales.	
8.11	SFN	Agree. Working with children, when preparing or serving food.	See 8.1
8.12	Rowlands	Operating machinery	See 8.1
8.13	TICAP	No. There is little risk of an accident when driving even whilst smoking tobacco cigarettes. In this paper only 0.9% of accidents were attributable to smoking compared to distractions generated by other occupants (10.9%) and adjusting audio controls (11.4%). With e-cigs you do not even have the minor distraction of lighting up. We are also unclear what other activities/locations are being implied in this rule and why they should be included. [evidence]	See 8.1
8.14	WHOTS	WHOTS agrees with this approach. In addition to mentioning driving as an example to illustrate how this rule would apply, reference should also be made to the voluntary bans on the use of electronic cigarette (and similar devices) introduced at locations such as licensed premises, and some work places. It is also worth mentioning that Welsh Government is currently consulting on its Public Health Bill which includes the proposal to ban the use of electronic cigarettes in enclosed and substantially enclosed public places (including places of work) in Wales. In other words the use of electronic cigarettes would be banned in all the same places that smoking is prohibited See the consultation document at	See 8.1
8.15	Dr C.	Flammable substances	See 8.1
8.16	RCR	Any activity using manual equipment or activity that requires manual dexterity e.g. flying.	See 8.1
8.17	TFF	We believe e-cigarette use also should not be shown in the presence of people who could reasonably be considered to be under 18. Consider that CAP and BCAP should provide guidance to ensure that marketing communications do not imply that e-cigarette use is permitted in all enclosed public spaces when such rules vary between premises. The ASA has already ruled on such issues but remains commonplace in advertising.	See evaluation of proposed rules 9 and 10 below
8.18	Boots UK	Agree but question whether this would be covered by the requirements for social responsibility.	See 8.1

8.19	RPS	We agree with this statement but it should be widened to include all other forms of public and private transport. There are reports of asthma attacks being induced by propylene glycol so any use in a restricted space increases this risk, particularly in children. There have also been incidents of fire hazards with USB charger devices which could be used on trains. We do not yet have safety data on the toxicology of deep inhalation of all the ingredients in the vapour so use in a restricted space where others are exposed to secondary vapour should be avoided.	See 8.1 and 8.4
8.20	SCOT, CIS	Agree with the inclusion of this rule. We would add that marketing communications/advertisements should also be preventing from stating or implying that the use of e-cigarettes is permitted in all enclosed public places covered by the restrictions on smoking tobacco cigarettes. In reality, these policies vary across premises, so advertising that presents e-cigarettes as products that 'can be used anywhere' (or similar) is inaccurate and undermines the policies of organisations that have restricted e-cigarette use in order to more effectively enforce the legislative ban on smoking tobacco cigarettes.	See 1.19
8.21	DCTA	Prohibit enclosed public spaces or with children present.	See 8.1, 1.19 and evaluation of proposed rules 9 and 10, below
8.22	CAA	CAP may wish to consider preventing ads which show their use in a car with children present to accord with public attitude.	See 8.1
8.23	CRUK	Agree, with further guidance on depictions of use in public spaces / workspaces. Guidance could reflect ASA adjudications about misleading as to where they can be used.	See 8.1 and 1.19
8.24	CEntSA	Consider that e-cigarettes should not be advertised in use on public transport, in the workplace, in pubs/clubs; again this can lead to normalisation and is unwise to do so as users may think it acceptable to use such products in these situations which can lead to confrontation and conflict. They should not be marketed or associated with places that young people have access to such as sports grounds and cinemas.	See 8.1, 1.19 and evaluation of proposed rules 9 and 10, below.
8.25	ECITA	Consider it counter-intuitive for the Committees to have identified driving as an activity where "e-cigarette use might be so demonstrably problematic". There is no evidence for this, nor is there a law against smoking while driving, despite the very real risk of setting oneself on fire. Consider the rule should not give examples and to allow the ASA to deal with issues on a case by case basis rather than setting sweeping precedents at this time.	See 8.1.
8.26	Fontem	Agree in principle. We would suggest clarifying the rule by replacing "link e-	See 8.1

		cigarettes” with “portray or represent e-cigarette use”. We would suggest broadening the rule’s scope by adding “environments” to the list of contexts: “portray or represent e-cigarette use in the context of activities, environments or locations”. Whilst we support the recommendation not to associate e-cig use with driving in advertising and marketing communications, we do not consider using an e-cigarette whilst driving to be inherently unsafe. We would therefore suggest clarifying the rule by replacing the word “would” with “could”. We would recommend to avoid including an explicit list of prohibited activities, as this may cause confusion and lead to the assumption that activities, environments and locations not included in the list may be used in marketing. These revisions to the recommended rule should ensure that it covers any activity in which e-cigarette use may be inappropriate, unwise or dangerous.	
8.27	GSK	Agree. However GSK believes that advertisements should not be set in environments where you would not normally expect people to see someone smoking a cigarette, or where it is prohibited by law for example in an office environment.	See 8.1 and 1.19
8.28	Healthy Stadia	Agree with this rule. We would highlight the growing number of sponsorship deals between e-cigarette brands and motor-sports events (both cars and boats) and the potential association of using e-cigarettes whilst in charge of vehicles.	See 8.1. B/CAP do not have a role in the regulation of product sponsorship.
8.29	MSSS	Not to be depicted used in the presence of a child under 18.	See 8.1 and rules 9 and 10 below.
8.30	NELSA	We agree with the need for this rule. When the proposals next year within the Children and Families Act introduce an offence to smoke in a car with children present, this may lead to many people choosing to use electronic cigarettes in cars to comply with the ban on tobacco products. There is a potential therefore for e cigarette manufacturers to exploit this potential increase in the market for them by linking e cigs to their use in cars.	See 8.1. The ASA will be able to consider any such legislative change when considering whether particular depictions are responsible or misleading.
8.31	NHS Grampian	E-cigs should not be shown in a context including children and young people or which includes role models they may follow.	See 1.9 and the rules concerning the protection of children and young people.
8.32	NHS Lanarkshire	Yes, e-cigarettes should be kept out of the reach of toddlers; children & pets due to the risk of poisoning from nicotine ingestion. Ideally these should be promoted for outdoors use only and definitely not within the indoor public places, workplace or healthcare settings	See 8.1
8.33	PAGB, TSI	Support rule but with change in wording to include “prohibited”	See 8.1

8.34	NNA	We do not agree that it is inherently unsafe to use an e-cigarette whilst driving. It is not against the law to smoke whilst driving, and e-cigarettes are clearly safer, as they are not burning. Nicotine aids concentration. The planned ban on smoking in cars with children on-board, offers an opportunity to appeal to smokers to switch to ecigarettes. It would be a shame to miss this opportunity.	See 8.1
8.35	RCP&UKCTAS	Generally, and in absence of specific justification, we believe that portrayal of use in any setting where smoking is currently prohibited or inappropriate (for example, when using oxygen) should be avoided.	See 1.19
8.36	Cygnnet	Concerned that this proposed rule is also arbitrary and unsupported. Electronic cigarettes are not combustible and their use in particular activities or locations is no different from using another battery operated device. Equally, they do not impair normal brain function in any way (unlike, for example, alcohol), and hence there are no activities of which we are aware where it would 'unsafe or unwise' to use electronic cigarettes. Dealing with the specific matter referenced, the proposed Rule considers the use of electronic cigarettes whilst driving to be "unsafe or unwise". The use of electronic cigarettes whilst driving has not been proven to be more unsafe or unwise than speaking or eating while driving. As the law currently stands, drivers are generally able to smoke tobacco cigarettes whilst driving. Accordingly, the prohibition on linking electronic cigarettes with activities such as driving appears to overreach current domestic legislation and any evidence base. In addition, there is no guidance provided in the Consultation as to what an "unwise" activity would be.	See 8.1
8.37	ORG.A.	Any new rules must be clear, consistent, and should seek to avoid ambiguity for broadcasters and Clearcast. In order to simplify the compliance process, BCAP should define the minimum set of rules necessary to meet its policy objectives. With this principle in mind, we do not support the proposed Rule 8, due to the inherent subjectivity in the rule. Specifically, the use of e-cigarettes could be considered by some to be unsafe or unwise when engaged in a whole host of everyday activities, and so it would be very difficult for broadcasters and Clearcast to ensure compliance with this rule. If BCAP considers that e-cigarettes should not be linked with certain specific activities – such as driving – then any rule should be linked specifically to those activities. Otherwise, consumers should be adequately protected by the inclusion of the broad social responsibility rule.	See 8.1
8.38	IPA	Do not object but seems unnecessary in light of general responsibility rules.	See 8.1
8.39	Counterfactual	No. There is no evidence that driving while using an e-cigarette is dangerous or	See 8.1

	<p>more dangerous than smoking or eating while driving, which are both permitted. It is not analogous to hands on mobile phone use, which also involves distraction into a conversation. In fact, to the extent that e-cigarette use offsets nicotine withdrawal symptoms, it may reduce risk. A rule like this should be reserved for those situations where there is official advice or legislation against using the product. It should not be for the advertising regulators to determine what this is. If this rule persists, then rather than list activities, it would be better to state the general case ('unsafe or unwise') and give an example rather than create an exclusive list. Given that e-cigarette use is possible in some circumstances where cigarette use is not, discretion is required. For example, vaping while snowboarding might seem unwise, but it could be simply adventurous and aspirational without creating material danger (beyond that of the snowboarding itself).</p>	
--	--	--

Rule 9: Marketing communications / Advertisements must not be likely to appeal particularly to people under 18, especially by reflecting or being associated with youth culture. They should not feature or portray real or fictitious characters who are likely to appeal particularly to people under 18. People shown using e-cigarettes or playing a significant role should not be shown behaving in an adolescent or juvenile manner.

Question 17: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement			
9.1	<p>Respondent making points in favour of the proposal:</p> <p>ASH Scot. Boots UK, CAA, CMTA, Counterfactual, CRUK, DCTA, ECITA, GSK, Health Stadia, ORG.A., Nicoventures, NELSA, NHS Grampian, SEC, PAGB, Fontem, IPA, NNA, RTCA, BHF, CCC, RCP&UKCTAS, SCOT, CIS, CEnTSA, LCC, TSI, PML, SPH, PV, HOM, PHE, TFF, Dr. C, SG, LCFT, RCR, UKHF, TSNW, Rowlands, PHS, STCPAB, TCRG, WSCC, WHOTS, TW, Mr B., BMA, Ms B.,</p>	<p>The organisations listed on the left supported the inclusion of the rule.</p> <p>Summary of significant points:</p>	<p>CAP and BCAP's (B/CAP's) evaluation:</p>
9.2	<p>ARNS, ASH, ASH-W, HAS, FPH, BLF, RCPCH, SSA, ADPH, BrBC, CFNI, HAT, SFNA, NSTAG, SFCDTA, RSPH, CIEH, WSSS, TC, SFSW</p>	<p>We support the first sentence of this rule. However, we believe a balance needs to be struck between prohibiting advertising that might promote use of electronic cigarettes to young people and non-smokers and ensuring that advertising which effectively encourages the uptake of such products by smokers is allowed.</p> <p>To give a concrete example an advertisement which recently ran on British TV was very clearly directed at smokers with an important message 'Friends don't let friends smoke'. This advertisement conformed to the general principles we set out, however strict application of rule 9 as it stands would have prevented it being shown as it included two friends behaving in a juvenile manner. This was part of a narrative</p>	<p>B/CAP are mindful of the need to balance this rule in a way that prevents advertising executions which appeal to children and young people without unduly restricting advertisers from exploring diverse and creative treatments that speak to adult audiences. Similar rules are well established in other sectors and the ASA has significant experience in</p>

		<p>about them growing up, getting married and one persuading the other to swap cigarettes for electronic cigarettes.</p> <p>Another example is an advertisement featuring a dancing baby which was banned by the ASA because it might be appealing to children. This was despite the fact the ad conformed to all the general principles which we set out above and had a very strong message to smokers that smoking cuts you out of family life. We therefore believe rule 9 should be revised and the second two sentences removed.</p>	<p>applying them. B/CAP does not take a view on the acceptability of particular advertisements, however when applying these rules, it is B/CAP's intention that the ASA may find advertisements to be compliant with the rule if, when taken as a whole and in context, the ad is judged to not be of particular appeal to children or young people.</p>
9.3	Zandera	<p>Youth culture' is an extremely broad concept. Correspondingly we believe it should be defined by reference to the parameters set out in the proposed Rule 10 below; perhaps "... being associated with activities or situations in which people under 25 are the predominant participants or audience ...".</p>	<p>B/CAP and the ASA have experience applying similar rules in other sections of the Codes on a case by case basis. B/CAP intend the rule to be applied consistently.</p>
9.4	SELITN	<p>The rule should also prevent people being used in adverts who may be seen as a responsible adult to a young person such as teacher or as a role model such as a sportsperson or someone indulging in healthy, trendy, cultural or glamorous activities</p>	<p>The ASA will consider each ad as a whole and in context. While B/CAP do not consider it proportionate to ban references to specific professions, advertisers will wish to take particular care if they are referencing individuals / professions so that they are not likely to appeal particularly to those under 18.</p>
9.5	ASH, RCPCH, HAT, RSPH, CIEH, WSSS, TC	<p>Electronic cigarettes and other nicotine containing products should not be advertised in ways or through channels that could reasonably be expected to make them appealing to children and young people.</p>	<p>B/CAP agree.</p>
9.6	J&J	<p>Agree. Additionally, beyond real or fictitious characters, no celebrity or healthcare professional endorsement should be allowed in advertising as this is particularly likely to appeal to people under 18. Wording to that effect should be included in the rule.</p> <p>As previously suggested, advertising for refills should clearly state the need for care when storing refill packs, particularly around children.</p>	<p>See 1.9. B/CAP have provided a new rule to prevent endorsements by healthcare professionals.</p> <p>See 3.3 and 8.4.</p>
9.7	STCPAB	<p>Agree but keen to avoid executions that are like old tobacco ads (e.g. Marlboro man)</p>	<p>See 2.2</p>

9.8	TCRG	We agree with the inclusion and wording of this rule. Our support for this rule reflects our concerns about the potential use of e-cigarettes among young people and the re-normalising of tobacco smoking among this age group through images, messages and behaviour portrayed in advertising that might be likely to appeal particularly to under 18 year olds.	B/CAP agree.
9.9	Prof GW	Agree with the rule insofar as it serves to prevent new use of nicotine amongst children. However, two-thirds of smokers took up the habit before the age of 18 and almost two-fifths (40%) had started smoking regularly before the age of 16. Restrictions on advertising to under 18s therefore mean that the product is not advertised to the critical age population who could benefit from this less harmful alternative. Such messages have been achieved for other complex public health issues.	See 9.2
9.10	SFN	Consider that there should be a requirement that electronic cigarettes cannot not be allowed to be shown as a 'fashion' accessory	See 1.9
9.11	RPS	This wording should be broadened and reinforced to emphasise the need to be aware of all aspects of life which will particularly appeal to young people and to accommodate future trends which might emerge and catch the imagination of this vulnerable group e.g. advertisements which encourage individual designing and building of bespoke e-cigarettes.	B/CAP consider that the rule already achieves this objective. The ASA will judge individual ads on their own merits.
9.12	CMTA	Agree with the rule as drafted, but consider that the reference to "adolescent or juvenile manner" may threaten the effectiveness of the rule.	See 9.2
9.13	Counterfactual	Yes. This is based on 18.14 of the Code provisions on alcohol. The experience and precedents developed through alcohol related adjudications will form useful guidance to the application of this age-related language to e-cigarettes. There is therefore a high premium on keeping the language near to identical with alcohol given that in both cases the identical issue is faced: how to limit advertising that appeals to under-18s. There is no hard and fast delineation between appeal to the target group (adults) and the unintended group (under 18s), so it is important to retain the language - particularly to people under 18 - implying that under 18s are the main target audience, whether intended or not.	B/CAP agree and consider that adjudications in other sectors which present concerns about public health and the protection of children are likely to be instructive to e-cigarette advertisers. However the ASA will continue to judge each ad on its own merits.
9.14	Cygnnet	Agree, subject to the last sentence being amended or clarified. Object to the last sentence: "People shown using e-cigarettes or playing a significant role should not be shown behaving in an adolescent or juvenile manner" and the reference to the term "youth culture" on the basis that the language used is very subjective and open to wide interpretation. Electronic cigarette companies need clear guidance as to what these terms mean otherwise they could be exposed to complaints without any	See 9.2

		real cause.	
9.15	WG	We agree that advertising of e-cigarettes should not appeal to young people under the age of 18. The term youth culture is quite broad and could be open to interpretation. A definition could be useful and would assist potential advertisers to ensure they do not breach this rule. The second sentence of the rule could potentially leave a lot of room for interpretation. The Welsh Government would like this to be strengthened to say that they should not glamorise the use of e-cigarettes to people under 18 which could be a gateway to smoking. This would be particularly important for endorsements from high profile figures from the entertainment industry and from sport which will be very likely to appeal to people under the age of 18.	See 9.2 and 1.9
9.16	LCC	We agree with this rule and its wording. A 2013 Trading Standards Survey with 3,471 young people aged 14-17 years across Lancashire County highlighted that more than one in four (27%) had bought or tried electronic cigarettes. This could potentially facilitate a lifelong addiction to nicotine and provide a route into smoking conventional cigarettes. This could be compounded if advertising and promotion of electronic cigarettes was allowed to promote their use to young people. Indeed a recent qualitative research study of 45 young people aged 13-17 years in Cheshire and Merseyside highlighted that e-cigarette use was driven by youth-relevant marketing strategies such as the availability of different flavours, designs and the opportunity to customise devices to reflect individuality.	B/CAP agree but see 1.14 and 1.9.
9.17	Healthy Stadia	Strongly agree with this rule, but would seek clarification over the definitions of both 'youth culture' and behaving in an 'adolescent or juvenile manner'. Concerning youth culture, Healthy Stadia would argue that sport (whether played at amateur level, or viewed at professional level) is an integral part of youth culture, and that a definition of youth culture also incorporates sport at both amateur and professional level.	See 9.2 and 1.35. B/CAP do not consider it proportionate to ban all references to sport irrespective of context.
9.18	LOTSAs	Agree so long as this whole section [i.e. that devoted to the protection of children and young people] is as strong as for alcohol.	In preparing the draft rules the committees drew on their experience setting rules for sectors that have presented similar public policy issues, such as alcohol and gambling. However the Committees were mindful that e-cigarettes are a unique product with their own complexities and, unlike with alcohol and gambling, strong arguments have been made for their public health benefits. So while some of the rules in this section are the same

		The rule should also prevent people being used in adverts who may be seen as a responsible adult to a young person such as teacher or as a role model such as a sports person or someone indulging in healthy, trendy, cultural or glamorous activities.	as those found in the Alcohol or Gambling sections of the Codes, it is not the case that all of the provisions in those sections have been copied. See 1.9
9.19	GSK	Agree but rule should be modified to remove reference to “using e-cigarettes” as such depictions should be prohibited.	See 2.6
9.20	SHWB	We agree with this rule. We believe that to support this rule e-cigarette adverts should not be included before the watershed to limit children and young people’s exposure to e-cigarette advertisements. We are concerned about how this rule can be adhered to with sponsorship of sports such as televised football programmes whereby the sponsorship will be televised to young people and product placement within television shows that again may appeal to young people.	See 13.2 B/CAP do not have a regulatory role in relation to the appearance of sponsorship as it appears in broadcast television programme content. Such matters are dealt with under the Broadcasting Code which is administered by Ofcom. Product placement of e-cigarettes is already prohibited by the Broadcasting Code, however this does not necessarily prohibit e-cigarettes being used as props on a non-paid-for basis.
9.21	NHS Lanarkshire	Advertising should not promote glamorous, adult pursuits i.e. their use should not be shown in pubs/clubs as linking e-cigarettes to these activities would potentially promote their use by young people.	See 1.9
9.22	TICAP	Agree, but recognise that any form of advertising to adults will spill over to at least some extent in making youth value the advertised products. However it is important that the wording of this rule should be adhered to explicitly, perhaps by emphasising the use of the word “particularly”.	These rules are not specifically designed to capture advertising for caffeine or alcohol.
9.23	Fontem	Agree in principle. Suggest widening the scope of the rule by adding in a line: “They should not be set in environments, locations or situations which are of particular relevance to people under 18 (e.g. schools).”	See 9.4

9.24	HTCSG	We support the first sentence of this rule. However, we believe a balance needs to be struck between prohibiting advertising that might promote use of electronic cigarettes to young people and non-smokers and ensuring that advertising which effectively encourages the uptake of such products by smokers is allowed.	See 9.2
9.25	MSSS	Consider the rule should prevents ads appealing to under-18s “at all” rather than particularly.	B/CAP consider that such a restriction would be disproportionate as it is unlikely to be possible to create advertising that has absolutely no appeal to particular age groups. In that light the Committees seek to preclude creative treatments that might be judged to appeal particularly to young people.
9.26	RCR	Agree – nicotine is an extremely addictive substance and use should not be encouraged especially in juveniles.	B/CAP agree.

Rule 10: People shown using e-cigarettes or playing a significant role must neither be, nor seem to be, under 25. People under 25 may be shown in an incidental role but must be obviously not using e-cigarettes.

Question 18: Do you agree with the inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.			
10.1	<p>Respondent making points in favour of the proposal:</p> <p>ASH Scot, ASH-W, Boots UK, Counterfactual, CAA, CMTA, ECITA, Healthy Stadia, FPH, ORG.A., Nicoventures, NELSA, NHS Grampian, SEC, PAGB, Fontem, IPA, ADPH, BHF, SCOT, CIS, CEnTSA, LCC, TSI, NHS Lanarkshire, PML, SPH, PV, Cygnet, HOM, PHE, TFF, WG, Dr C., SG, LCFT, RCR, UKHF, SELITN, J&J, TSNW, Rowlands, SFN, NSTAG, SHWB, STCPAB, TCRG, WSCC, TW, BMA, Zandera, Ms B.,</p>	<p>The organisations listed on the left agreed with the rule as proposed. A summary of significant points:</p>	<p>CAP and BCAP's (B/CAP's) evaluation:</p> <p>B/CAP are implementing the rule as proposed.</p>
10.2	<p>ARNS, ASH, HAS, BLF, RCPCH, SSA, BrBC, CCC, CFNI, HAT, HTCSG, SFNA, SFCDDTA, RSPH, CIEH, WSSS, TC</p>	<p>Support the age of sale restriction on sales of electronic cigarettes of 18 and believe that the rules should be consistent with this. Current data shows that two thirds of smokers became addicted to cigarettes under the age of 18 and over 80% by the age of 20. The highest rates of smoking are amongst young people in their early twenties and by the age of 25 over 40% of young people have been, and nearly one in four still are, regular smokers.</p> <p>The use of the age of 25 is in conformity with rules on alcohol advertising but we do not think it is justified in this case given that use of electronic cigarettes as an alternative to smoking is much less harmful than heavy alcohol consumption. We would therefore replace '25' with '18'.</p>	<p>B/CAP understands the rationale put forward, however they are also mindful of the strong need to minimise the appeal of these products to under 18s generally and particularly those who do not consume nicotine.</p> <p>In that context B/CAP consider that retaining a minimum age limit of 25 is the most proportionate decision. This limit has been chosen because by the age of 25 people clearly look and sound more adult than adolescent. It also mirrors the minimum age limit in other Code sections. CAP and BCAP consider that this approach provides that children and young people do not identify, by age, with those playing a significant role or who are featured using e-cigarettes. It also gives more certainty to</p>

			<p>the advertising industry when creating advertisements and to the ASA Council when deciding if an advertisement has breached the Codes.</p> <p>B/CAP have provided a separate rule which prevents particular appeal to those under 18.</p>
10.3	SFSW	<p>Support the inclusion of the rule and its wording. It is important that e-cigarette marketing communications and advertisements do not appeal to young people. We believe that this rule is needed to help prevent e-cigarette advertisements being attractive to young people. Given the potential risk for people under the age of 18 to identify with those who appear to be 18 and 25 years old, it is reasonable to prohibit people who are or seem to be under the age of 25 being shown in a significant role in e-cigarette marketing communications or advertisements. The rule also offers less room for error and abuse. The rule avoids ambiguity as people shown in marketing communications or advertisements could not be mistaken for people under the age of 18.</p>	B/CAP agree.
10.4	ASH-W	<p>We agree with the inclusion and wording of this rule. Although electronic cigarettes will be legal for 18 and overs to purchase, there is a risk that if people under the age of 25 are shown using the product, this may reinforce positive associations about the product in the minds of young people.</p>	B/CAP agree.
10.5	SPH	<p>We agree with the inclusion and wording of this rule to support the Challenge 25 agenda to preventing young people gaining access to age restricted products</p>	B/CAP agree.
10.6	Mr B.	<p>Under-25s should not be shown at all. Nor should non-users. No suggestions that non users welcome the devices.</p>	B/CAP does not consider that showing under 25s in an incidental role is necessarily irresponsible provided that the requirements of all the relevant rules are met.
10.7	WHOTS	<p>WHOTS fully supports the inclusion and wording of this rule. While the proposed age restriction on electronic cigarettes and similar devices would prohibit sales to the under 18s, restricting their use in marketing to the over 25s is entirely in line with the industry 'Challenge 25' initiative to limit the</p>	B/CAP agree.

		possibility of underage sales.	
10.8	PHE	We recognise that the advantages of replacing smoking include protecting children from secondhand smoke and therefore believe the representation of children and young people should be permitted when it is consistent with the rational use of the product.	B/CAP agree.
10.9	NELSA	Do not support the suggestion that this should be reduced to 18. Concerned that e-cigarettes will become a gateway to smoking to young people. To allow an age restriction of just 18 would allow marketing to be targeted at the older teenage market. E cigarettes are easily accessible and affordable by young people and it is important to avoid a culture of e-cigarette smoking by young people. Important that the products are only marketed to existing adult smokers.	B/CAP agree.
10.10	RTCA	We support the proposed rule that young people should not play a significant role in the advertising of electronic cigarettes, but note that the age of sale restriction to be brought in for the products will be 18 years. We acknowledge CAP/BCAP's rationale for selecting age 25 as an age at which people clearly look and sound more adult than adolescent.	B/CAP agree.
10.11	GSK	Consider that under-25s should not be shown at all unless it's part of an anti-smoking message.	See 10.5
10.12	RCP&UKCTAS	Disagree. There are many smokers aged under 25 who might benefit from targeting by advertising. Age appearance restrictions do not prevent advertisements being designed to appeal specifically to young people. A 25-year age limit would not prevent this from happening. Rule 6 therefore applies.	See 10.2. B/CAP has provided a separate rule to prevent creative treatments likely to appeal particularly to children and young people.
10.13	SELITN, LOTSA	Would prefer middle aged (over 45) to older actors in adverts who are relapsed quitters and current smokers.	B/CAP is not aware of a rationale or evidence base for implementing such a high age limit.
10.14	NNA	We support the principle of not using teenagers, but 25 seems excessively high. There are many smokers between the age of, say, 20 to 25 that would benefit from switching to e-cigarettes.	See 10.2
10.15	CRUK	E-cigarette use also should not be shown in the presence of	See 10.2

		people who could be reasonably considered to be under 18.	
10.16	WG	<p>We agree that people under the age of 25 should not be shown using e-cigarettes in advertising. This would be consistent with the approach taken for the alcohol guidelines, which has a minimum age of 25 for showing a character drinking alcohol.</p> <p>We have some concerns about those under 25 being shown even if they are in an incidental roles we do not think e-cigarettes should ever be shown being used in front of children. With regard to the statement in the consultation on plans by the UK Government to ban the sale of nicotine products, including e-cigarettes to under 18s, the Welsh Government would like to clarify that these requirements could also potentially apply to Wales.</p>	<p>B/CAP agree.</p> <p>See 10.5</p>
10.17	TICAP	No. While it is reasonable to require advertisers of age-restricted products to avoid deliberately intimating that underage use is acceptable through the use of actors clearly portraying underage use, we do not believe it is acceptable to forbid actors in the age range of 18 through 25 from working in such ads.	See 10.2
10.18	PHS	Disagree. The highest prevalence of smokers is in the under 25 category with 25% being smokers. As an alternative to smoking tobacco products this age group should not be excluded from advertising as long as the target is to people under 25 who are already smoking and not to appeal to non-smokers. They must clearly look over the age of 21 and if it is considered that this would be open to abuse it would be a reason to include rule 10.	See 10.2
10.19	DCTA, MSSS, RPS, LOTSA	Consider that ads should not feature under-25s at all.	See 10.5

Rule 11: Marketing communications / advertisements must state that products are not suitable for under-18s.

Question 19: Do you consider that a rule is necessary which requires that ads state that products are not suitable for under-18s? Please provide any evidence which may you consider may assist CAP and BCAP's consideration of this rule.		
11.1	<p>Respondent making points in favour of the proposal:</p> <p>ARNS, CMTA, CRUK, DCTA, Healthy Stadia, MSSS, Nicoventures, NELSA, SEC, Fontem, RTCA, BrBC, CCC, CEnTsA, TSI, PML, PV, Cygnet, HOM, PHE, Dr C., LCFT, RCR, SELITN, Rowlands, LOTSA, NSTAG, STCPAB, TW, Mr B., BMA, Zandera, Ms B.,</p>	<p>CAP and BCAP's (B/CAP's) evaluation:</p> <p>The organisations listed on the left supported the inclusion of the rule. Summaries of significant points follow below:</p> <p>After further consideration B/CAP considered that it was not necessary to implement this rule. See the evaluation below.</p> <p>B/CAP proposed such a rule on a precautionary basis. The BCAP and CAP Codes do not typically require warning messages to be included in ads. A rare example is the requirement in CAP Code rule 11.7 and BCAP Code rule 9.9 that ads for specific energy-related products must include the product's energy efficiency class. Usually when compulsory messages appear in ads, it is because other regulators, such as the Financial Conduct Authority (FCA), require them. While CAP and BCAP welcome efforts that may further the objective of discouraging children and young persons from purchasing e-cigarettes the Committees have previously had cause to question the overall value of warning messages (more information about this is provided in the accompanying Regulatory Statement) and as a result do not mandate similar messages for alcohol or gambling. The committees were particularly mindful of the risk of such messages indirectly</p>

			making the products attractive to children (the 'boomerang' effect) and the need not to unduly burden advertisers with compulsory messages in limited time and space (particularly in broadcast advertising). In the context of those concerns and the other rules provided to prevent advertisements being likely, B/CAP consider that on balance, the rule is not necessary and have elected not to implement it.
11.3	ASH-W	We recognise that placing an "18+" message on products may not always produce the desired effect among children and young people. However, if regulations making the products only legal to sell to those aged 18 and over are approved, this will have to be reflected in the advertising requirements. However, revising the rules in the ways suggested under Rules 3 and 6 would require that electronic cigarettes are never advertised or promoted in a way that could appeal to young people and non-tobacco users.	See 11.1
11.4	STCPAB	Consider that the rule is very necessary. Within Sheffield insights have identified that young people (under 18) who had not previously been smokers are experimenting and using e-cigarettes. It is crucial that we eliminate opportunities to advertise these products to children or non-users of tobacco products to ensure we limit the potential for harm. We are concerned that e-cigarette use will become a gateway to lifelong use of nicotine either via continued use of electronic cigarettes or other forms of tobacco such as cigarettes.	See 11.1
11.5	WHOTS	Agree. There appears to be significant uncertainty in the minds of retailers / parents / users of these products as to whether there is any age-restriction imposed upon them, or whether they are suitable for young people at all. Any such a statement in advertising material is vital, to reinforce the fact that these are not suitable for under 18s, both as an addictive product in their own right, and as a possible gateway to traditional smoking materials.	See 11.1
11.6	CEnTSA	Agree. The Children and Families Bill will introduce an age restriction on the supply of such products to under 18's. Business advice has already been provided suggesting that it is best practice (until legislation dictates) not to supply such products to under 18's. There have not been significant complaints around the supply of such products to under 18's,	See 11.1

11.7	DCTA	Agree if it is the legal age for purchase.	B/CAP understand that there is not presently a legal minimum age for the purchase of e-cigarettes.
11.8	SFN	We recognise that placing an “18+ message” on products may not always produce the desired effect on children and young people. Indeed there is good evidence that tobacco industry youth prevention media campaigns that position smoking as an adult habit are not effective. We would prefer a revised set of rules, on the principles set out above, which require that electronic cigarettes are never advertised or promoted in a way that could appeal to young people and non-tobacco users. But in order to provide additionality to this approach Smoke Free Newcastle would welcome the addition of a clear warning message that nicotine is an addictive substance and that electronic cigarettes are not intended for use by those not currently smokers.	See 11.1
11.9	Rowlands	Agree. These products should only be sold to adults (over the age of 18 years) and retailers will be expected to enforce this restriction. It is therefore helpful if this is included in marketing messages from the outset as it will help provide legitimacy for the retailer when sales are refused.	See 11.1
11.10	SG	Note the consultation document makes a comparison with the impact of alcohol warnings. However, we would comment that age restrictions on alcohol are well understood. E-cigarettes are new products and such restrictions are not yet in place. We suggest that further consideration is given to these differences.	See 11.1
11.11	J&J	Requirement completely justified. “Not suitable for under 18s” (or similar) should be mentioned in any type of e-cigarette advertising. As this category is new and to date e-cigarettes have been widely promoted and used without any restriction, it is necessary to educate the general public (e.g. parents, teachers, carers, retailers, etc) that the product is not suitable under 18s. The rule will need to be reviewed for e-cigarettes regulated as medicines in the UK as providing the terms of their marketing authorisation is similar to that of presently available NRT, they could be licensed for use by smokers over 12s.	See 11.1
11.12	Fontem	Our products are uniquely aimed at an adult audience capable of making informed decisions. We therefore believe that the e-cigarette industry has a responsibility to convey and reinforce the message that its products are not appropriate for, and should not be retailed to, those under the age of 18.	See 11.1

		<p>This message should be reinforced in our advertising so that all consumers are properly informed.</p> <p>We think the inclusion of such a rule could be helpful, providing it is not overly prescriptive. Companies should be able to convey this message in a way that is most appropriate to the medium used. A rule requiring an age disclaimer would ensure industry-wide adherence in marketing activities to standards promoting an attitude of responsibility towards Under-18s.</p>	
11.13	Healthy Stadia	<p>Healthy Stadia completely agrees with this rule. There are many examples of current advertising and marketing activities promoting e-cigarettes that focus on brand name alone, giving no additional information on the product in question, and no information on age-restrictions. A concrete example of this at sports stadia is the use of static and digital advertising hoardings simply promoting the brand name of an e-cigarette device with no additional guidance on suitability of age for usage.</p>	See 11.1
11.14	NHS Grampian	<p>Rule 11 is necessary and should include the wording, “not suitable for people under 18 or other non-smokers”</p>	See 11.1
11.15	NHS Lanarkshire	<p>We believe that for the purposes of clarity, for example for shop keepers, the product information should state an 18+ message.</p>	See 11.1
11.16	LCC	<p>Yes, we agree that such a rule is necessary. A 2013 survey of 3,471 young people aged 14-17 years across Lancashire County highlighted that more than one in four (27%) had successfully purchased and used electronic cigarettes. Similarly, a qualitative research study of 45 young people aged 13-17 years in Cheshire and Merseyside highlighted low levels of awareness and uncertainty regarding the current and proposed future regulation of e-cigarettes, with many reporting access to these products via family members, older friends or strangers outside shops.</p> <p>Existence of this rule will assist in increasing levels of awareness of, and compliance with, the forthcoming legislation banning the sale of Electronic Cigarettes to young people aged under 18 years by retailers, young people themselves and adults. The rule could also prevent proxy purchasing of e-cigarettes by adults on behalf of children and young people.</p>	See 11.1
11.17	NNA	<p>Agreed, although of course many under 18's already smoke and these people (at the start of their nicotine use) have most to gain from switching. Given that the Govt have already announced an intention to ban the sale of ecigarettes to under 18's, is this rule really necessary?</p>	See 11.1
11.18	PAGB	<p>Support it only for unlicensed products.</p>	See 11.1

11.19	PV	Agree. The rule is necessary due to the novelty of these products. Tobacco containing products and alcohol are historically known to have age restrictions upon them and this knowledge is widespread amongst the public. E-cigarettes are so new that the same is not assumed and as such, if UK legislation is going to ban the sale of the products to under-18s, then advertisements should provide this information to give audiences utmost clarity on these products.	See 11.1
11.20	WG	It is important that the unsuitability of nicotine for under 18s is included in the rules on the advertising of e-cigarettes as there is clear evidence that children can become addicted to the nicotine in tobacco from a young age, with two thirds of smokers in the UK start smoking before they turn 18. Young people can quickly develop a dependence on nicotine and may be unable to reduce their risks due to this addiction. The response to Rule 5 suggests wording for a warning being included on adverts that nicotine is an addictive substance which is not suitable for under 18s. A requirement for a warning on adverts that e-cigarettes are not suitable for children and young people would also reinforce to parents and other adults that children are not encouraged to experiment with e-cigarettes. This proposal needs to be considered alongside any other relevant evidence on the uptake of age related products where advertising has included warnings about age of sale and cases of the 'boomerang' effect which is outlined in the consultation paper.	See 11.1
	Respondent making points against the proposal:	Summary of significant points:	CAP and BCAP's (B/CAP's) evaluation:
11.21	ASH, ASH Scot. BLF, HAS, FPH, RCPCH, SSA, ADPH, CFNI, RCP&UKCTAS, SCOT, CIS, SPH, TFF, HAT, HTCSG, TSNW, SFNA, SHWB, SFSW, SFCDTA, TCRG, RSPH, CIEH, WSSS, TC	Placing an "18+ message" on products may not always produce the desired effect on children and young people. Indeed there is good evidence that tobacco industry youth prevention media campaigns that position smoking as an adult habit are not effective. Prefer a revised set of rules [see responses on other rules] which inter alia require that electronic cigarettes are never advertised or promoted in a way that could appeal to young people and non-tobacco users.	See 11.1
11.22	PHS	Splashing large markings that a product is not for under 18s is not well evidenced in reducing uptake in children. Small print could state that "not for under 18s" to provide support and guidance to parents/carers.	B/CAP agree. See 11.1
11.23	WSCC	Consider the rule is unnecessary as warnings are not effective and may have the opposite effect.	B/CAP agree. See 11.1

11.24	TCRG	We agree that the evidence on the likely impact of including such a statement on advertisement and promotions of e-cigarettes is unclear. Indeed there is a risk that by including this statement, this may be interpreted as making such marketing not appealing to under-18 and, in itself, satisfying promoter obligation to produce advertisements and promotions that do not appeal to under-18 year olds. On balance we therefore think that this statement should not be included and strict rules should be implemented to protect under-18 year olds from this marketing.	B/CAP agree. See 11.1
11.25	UKHF	No, we do not consider it should be required that ads make such a statement. There is good evidence that 18+ messages on products are ineffective and can have a perverse effect of increasing the allure of 'prohibited' products among children. ¹ Protecting children from inappropriate marketing for e-cigarettes should be achieved by ensuring there are sufficiently robust rules to restrict their exposure to e-cigarette marketing. See comments to rule 12.	B/CAP agree. See 11.1
11.26	Boots UK	It is noted that legislation is being introduced to prohibit the sale of e-cigarettes to under 18's. Until the legislation takes effect then it may be considered misleading and false to state that e-cigarettes are for over 18's only. Once the age restriction legislation has taken effect, whilst we would not object to any such requirement we would question whether it should be mandatory. A responsible advertiser would make this clear in marketing communications if appropriate, and legally the products could not be supplied to under 18's anyway. The requirement would impact on timings for radio and TV advertising.	See 11.1
11.27	CAA	Preference for not including this rule, but that B/CAP should monitor the effect of such warnings not being included.	B/CAP agree. See 11.1
11.28	ECITA	We are persuaded by the evidence that the risk of unintended consequences is too great, and therefore believe that this would not be an appropriate course of action in the context of e-cigarette advertng. Also, the avoidance of a direct age restriction message would clearly be in line with the Committees practice in other Codes, leading to greater harmony across the Advertising Codes. Furthermore, whilst we very much appreciate the Committees' understanding of the concern over the cost of airtime for radio advertisements, where a mandatory message must be included, we believe that the wording we have suggested at Q4 above would be beneficial as	B/CAP agree. See 11.1

		part of any advertising campaign, and may help to educate the general public in a helpful way if it is included in all such MC/A.	
11.29	GSK	Disagree with the rule. Could have the opposite effect and appeal to under 18s. Also would present problems for medicinal e-cigs indicated for use in under 18s.	See 11.1
11.30	ORG.A.	There is no similar requirement for gambling and alcohol ads. We recognise the caution expressed by BCAP in the consultation document. We do not believe that a rule is necessary which requires that ads state that products are not suitable for under-18s. Rather, there should be consistency in the rules amongst alcohol, gambling and e-cigarette products – and we consider that it should be sufficient to protect under-18s through Rules 9, 10, 12 and the scheduling restriction.	B/CAP agree. See 11.1
11.31	Counterfactual	No, these warnings are counterproductive and, paradoxically, an inducement to under 18s through implicit adult branding. I agree with the 'boomerang effect' argument mentioned in the analysis in the consultation document. There is some support for this in focus group research commissioned by ASH in 2000.	B/CAP agree. See 11.1
11.32	IPA	For the reasons given by CAP/BCAP, we would be concerned about the introduction of a rule requiring unnecessary, mandatory wording in marketing communications/advertisements. The effect of such warnings is questionable and the remaining rules should ensure that advertisements are neither attractive to, nor aimed at, children.	B/CAP agree. See 11.1
11.33	BHF	Disagree. We believe that the rules that ensure nicotine containing products should not be advertised in ways or through channels that could reasonably be expected to make them appealing to children and young people are appropriate without this addition. We believe that further research on the effectiveness of this measure in relation to electronic cigarettes is needed before making this a rule.	B/CAP agree. See 11.1
11.34	RC&RACC	Disagree. We agree with the Committees reservation against a tag such as “over 18s only”, for the reasons outlined in the consultation paper. Our view is that responsible scheduling to help ensure that under 18s are not exposed to radio advertising (see paragraph 7 below), control on content, (i.e. tightly-drawn rules to help minimise harm), and compulsory pre-clearance (see paragraph 8 below) are sufficient to help protect under 18s. We fully endorse the findings of the Navigator 2004 research prepared for the RAB research (referenced in the consultation) which showed that	B/CAP agree. See 11.1

		messages had no positive effect. (It may be, however, that some e-cigarette manufacturers include a reference to “over 18s only” on a voluntary basis).	
11.35	TICAP	Overkill on this will lead to the “forbidden fruit” becoming sweeter as it is associated with rebellion and adult behaviour. The same rules applied to alcohol and gambling should be applied to vaping nicotine products.	B/CAP agree. See 11.1 and 1.9.

Rule 12: Marketing communications must not be directed at people under 18 through the selection of media or the context in which they appear. No medium should be used to advertise e-cigarettes if more than 25% of its audience is under 18 years of age.

CONSULTATION QUESTIONS:			
Question 20: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.			
12.1	<p>Respondent making points in favour of the proposal:</p> <p>ARNS, ASH, Boots UK, BLF, CAA, Counterfactual, CMTA, DCTA, ECITA, ORG.A., MSSS, Nicoventures, NELSA, NHS Grampian, NHS Lanarkshire, SEC, SSA, ASH-W, Fontem, IPA, NNA, RTCA, ADPH, BHF, BrBC, CCC, CFNI, CEnTSA, LCC, TSI, PML, SPH, PV, Cygnet, HOM, PHE, WG, HTCSCG, Dr C., SG, LCFT, RCR, SELITN, J&J, TSNW, SFNA, Rowlands, SFN, LOTSA, NSTAG, SHWB, STCPAB, SFSW, WSCC, TW, Mr B., BMA, Zandera, Ms B. RSPH</p>	<p>The organisations / individuals listed on the left agreed with the inclusion of this rule as proposed. A summary of significant points follows below:</p>	<p>CAP's evaluation:</p> <p>For other sectors which present societal concerns around the protection of children and young persons, such as alcohol and gambling, CAP applies a rule which requires non-broadcast marketing communications not to appear in media which has an audience of under-18s of more than 25%. CAP considers that the need to minimise the risk of the young and particularly young non-smokers becoming e-cigarette users justifies the implementation of such a rule in this section also.</p>
12.2	<p>ASH, ASH-W, BLF, HSA, SSA, BLF, RCPCH, ADPH, BHF, CFNI, TSI, HAT, SFNA, SFN, PHS, SFCDTA, WHOTS, RSPH, CIEH, WSSS, TC</p>	<p>We agree with the inclusion and wording of this rule. It could be made more explicit by adding 'or location' after 'context'.</p>	<p>CAP considers that the rule already achieves this.</p>
12.3	<p>ASH Scot, SCOT, CIS</p>	<p>We agree with the principle behind this rule. However, some high impact commercial communications may meet the 'under 25%' threshold, but still expose many young people to e-cigarette marketing due to their high overall popularity. Hence we ask</p>	<p>While it is CAP's intention to minimise as far as possible children and young people's exposure to non-broadcast e-cigarette advertising, CAP is also mindful of the need execute that policy objective</p>

		CAP/BCAP to consider the total impact upon people under 18, as well as relative thresholds, when attempting to minimise the impact of e-cigarette marketing on under 18s.	without disproportionately limiting advertisers' ability to reach a legitimate audience for their products. Through its experience of setting rules for sectors which present similar societal concerns, and through the ASA's activities in enforcing those rules CAP considers that the 25% threshold continues to describe the appropriate limit beyond which it is proportionate to prevent a given audience profile from seeing electronic cigarette advertising because it represents an adequate level of bias to be robust enough to rely on as meaningful and unavoidably real.
12.4	TSNW	Concerned about the applicability of such a rule to social media.	The CAP Code applies to marketing communications on marketers own websites and other online space under their control. This includes social media. Many platforms and the advertisers of products such as alcohol and gambling who use them already have various targeting techniques in place to minimise the risks of their marketing communications being seen by children and young people. CAP considers that similar techniques are likely to be of use to e-cigarette marketers. Marketers wishing to make marketing generally visible on any site (whether social media or otherwise) will need to satisfy themselves that they can comply with this rule. CAP recommends taking advice from its Copy Advice team.
12.5	TCRG	We agree with the inclusion and wording of this rule. However, we do not think that it goes far enough to protect under-18s. We are concerned that this would not cover media which have large audiences and/or exposure among under-18s but where this does not reach 25% of the audience, e.g. some of the most popular TV programmes. We therefore suggest that an additional threshold be added where the number of under-18s exposed to the marketing is also included.	See 12.3, however this rule does not apply to broadcast television which is dealt with by the BCAP Code. Please see proposed rule 13, below.
12.6	UKHF	We agree with the principle but we question the use of the 25% of audience calculation on which this rule is to be implemented. CAP/BCAP need to assess whether media that is most popular with	See 12.5

		children and young people will be covered by the 25% threshold measure. This is particularly relevant to BCAP rules for TV advertising where many early evening ‘family’ programmes would fall outside this threshold. This means that some of the programmes with the highest absolute numbers of viewers under the age of 18 would potentially permit advertising for e-cigarettes because large numbers of adults are watching at the same time.	
12.7	RPS	Agree in principle but question if this % approach will apply to popular social media sites which attract all ages but have a substantial audience of young people. Query whether this wording protects the younger population from any new sites which emerge in future.	See 12.4
12.8	SG	Agree with the inclusion of this rule. However, we would encourage further consideration of the 25% limit. This could still result in a high number of under 18s being influenced by marketing communications.	See 12.3
12.9	Boots UK	Agree, however we would have possible concerns over the element regarding no medium should be used if more than 25% of audience is under 18 years of age and how this can be policed with regards to social media marketing communications.	See 12.3
12.10	Fontem	Agree in principle. We would recommend expanding the rule to explicitly cover promotional activity: “Marketing communications must not be directed at people under 18 through the selection of media, or, especially in the case of promotional marketing activity, the context in which they appear.”	The rule applies to non-broadcast marketing communications which include sales promotions.
12.11	Healthy Stadia	Strongly agree with this rule. We would point out that young people under the age of 18 make up on average 30% of those attending live professional sports events, and up to 40% of those who consume media channels (TV and radio broadcast, websites, social media, print media etc.) concerning professional sports. As such, if this rule were to be adopted, it should cover all live match-day advertising and marketing activities at sports stadia (e.g. advertising hoardings), whilst e-cigarette advertising should not be permitted in conjunction with sports media channels (e.g. professional club websites).	The rule applies to ads in all non-broadcast media, including those located online under the marketer’s control and in paid-for space within football stadia and the like. In the event of a complaint under this rule the ASA would assess the media and context and any available information about the audience profile before reaching a decision.
12.13	Nicoventures	Welcome clarity that rule is not intended to capture social media in general	See 12.4

12.14	NHS Lanarkshire	Yes, agree. It is important to constantly implement measures that de-normalise smoking and therefore the advertising of these products should be banned in areas where there is likely to be a younger audience for example at the cinema, football stadiums etc.	See 12.3
12.15	PAGB	<p>We agree with the principle but consider that this is an opportunity to further restrict advertising to reduce the risk of advertising to children. Where it is difficult to establish the audience's age or where there is a significant risk of advertising reaching beyond the intended audience, eg. digital media, further restrictions on advertising should apply.</p> <p>E-cigarette websites should also ask for age verification from consumers before allowing access to website content.</p>	<p>See 12.3 and 12.4</p> <p>In considering how to effectively limit the exposure of children and young people, CAP have applied the targeting rule and content restrictions which, in its experience have been effective in achieving that aim in other sectors.</p>
12.16	RCP&UKCTAS	We agree, though would suggest that the 25% threshold could be lower. We also argue that this should include product placement, celebrity endorsement and other use of electronic cigarettes in the media, including film, television, YouTube and other new media content.	See 1.9, 12.3 and 9.20
12.17	CRUK, TFF	Would prefer a 10% threshold. Consider that the rule is insufficient to reduce children's exposure. Adult films can reach substantial proportion of the population.	See 12.3
12.18	TICAP	Yes, but qualified. Whatever rule is made should be similar to, but significantly less restrictive, than that used for alcohol advertising because alcohol is significantly more harmful.	Se 12.1
12.19	GSK	Favour a 10% threshold. GSK is keen that the rule is applied to digital media, as under 18s have extensive access to this media. One concern is advertising on social media sites such as Twitter. It is possible that under 18s would see advertising on Twitter such as Promoted Trends or Tweets even if advertising was targeted at over 18s. GSK seeks additional restrictions on digital media, and amending 25% to 10% may be a way to do this. There are also certain advertising media where it is not possible to restrict the audience. We understand that it is not possible to put a restriction on transport media including trains, tubes, buses and bus shelters. This	See 12.1, 12.11 and 12.4.

		media also over-indexes on the proportion of under 18s that would see advertising. GSK seeks additional restrictions on this media and other media where it is not possible to restrict the audience, for example a prohibition of advertising, unless the product has a marketing authorisation from the MHRA.	
--	--	---	--

Rule 13: [Amendment to existing BCAP rule]

CONSULTATION QUESTIONS:

Question 21: Do you agree with e-cigarettes being included in this list of scheduling restrictions?

13.1	<p>Respondent making points in favour of the proposal:</p> <p>ARNS, ASH, ASH Scot., ASH-W, BLF, Counterfactual, HSA, Boots UK, CMTA, DCTA, ECITA, FPH, Healthy Stadia, ORG.A., NELSA, NHS Grampian, NHS Lanarkshire, MSSS, SEC, PAGB, SSA, RCPCH, Fontem, IPA, NNA, RTCA, ADPH, BHF, BrBC, CCC, CFNI, RC&RACC, RCP&UKCTAS, CEnTSA, TSI, PML, SPH, PV, Cygnet, HOM, PHE, HAT, WG, HTCSG, Dr C., SG, RCR, RPS, SELITN, TSNW, SFNA, Rowlands, SFN, LOTSA, PHS, NSTAG, SHWB, STCPAB, SFCDTA, TCRG, WSCC, WHOTS, TW, Mr B., Zandera, Ms B., RSPH, CIEH, WSSS, TC</p>	<p>The organisations listed on the left agreed with the rule as drafted. A summary of significant points:</p>	<p>CAP and BCAP's (B/CAP's) evaluation:</p> <p>B/CAP are implementing the rule as proposed.</p>
13.2	ASH Scot, SCOT	<p>We agree with the principle behind this rule. However we note that although some events that attract high viewership (e.g. prime time programming or sporting events) may not be 'directed at or likely to appeal' particularly to under 18s, they nevertheless are viewed by large numbers of under 18s. We ask BCAP to consider this 'total impact' in</p>	<p>BCAP seeks to set rules which are proportionate. This requires policy measures that respond to the need to limit children and young persons' exposure to e-cigarette advertising while avoiding a significant intrusion on adult viewing that would disproportionately</p>

		<p>its rules in addition to the existing scheduling restrictions.</p>	<p>limit advertisers' ability to reach a legitimate audience for their products. Any policy move seeking to exclude e-cigarette advertising from programmes of broader appeal that are watched by a predominantly adult audience would, in BCAP's view, run counter to this principle.</p> <p>B/CAP considers that adults should be able to view responsible advertising for products of legitimate interest to them, but in cases where the elimination of child impacts does not significantly outweigh the reduction in adult impacts that proportionality will have been lost. There is also the possibility that ad spend displaced from a small number of programmes of broader appeal towards a greater number of programmes with a narrower appeal may result in no actual meaningful reduction in the total number of impacts but only their dispersal. The notion of intrusion into adult viewing also influences BCAP's thinking on the findings about changing viewing patterns among older children and the usefulness of the current approach to scheduling. Recent research suggests that viewing by older children to adult commercial channels now peaks after 9pm.</p> <p>The 120 index gives broadcasters the capacity to determine programmes of particular appeal to a youth audience at any time of day, including beyond 9pm, and exclude e-cigarette advertising from those programmes. B/CAP considers that the 120 index continues to describe the appropriate limit beyond which it is proportionate to prevent a given audience profile from seeing alcohol advertising, because it represents an adequate level of bias to be robust enough to rely on as meaningful and unavoidably real.</p>
13.3	SFSW	<p>We support the inclusion of e-cigarettes being included in this list of scheduling restrictions. We believe that this will help prevent e-cigarettes being marketed to young people.</p> <p>However we note that that these scheduling restrictions are likely to be insufficient to reduce children's exposure to e-cigarette advertisements. Prime time early evening programming and sporting events are likely to</p>	<p>BCAP agrees.</p> <p>See 13.2</p>

		draw a wide audience. Although not principally directed at under-18s they are likely to attract a large audience of them. This issue was highlighted by Ofcom as a potential reason for why children had viewed more alcohol advertisements in 2011 compared with 2007. We would therefore like to see proposals to restrict the scheduling of e-cigarettes further to prevent children being exposed to e-cigarette advertisements.	
13.4	SHWB	<p>Agree. We feel that it should be very explicit on how this can be achieved nationally in a robust fashion. The sanction involved for breaching this should be of a significant degree to ensure that this is adhered to.</p> <p>Radio adverts should still need to state that nicotine is addictive in the same way that alcohol adverts carry a drinkaware message.</p>	<p>B/CAP agree. All major TV broadcasters have access to central clearance through Clearcast who provide consistent guidance across advertising. The ASA operates various levels of sanctions for non-compliant advertising; more details can be found on the ASA's website.</p> <p>BCAP do not mandate any compulsory messages in relation to alcohol advertising. See 5.3</p>
13.5	Healthy Stadia	Healthy Stadia strongly agrees with this rule, and we argue that the list of scheduling restrictions should also incorporate all sport related broadcasting.	See 13.2. B/CAP consider that it would be disproportionate to prohibit all advertising during sports programming.
13.6	TFF	Agree with the principle that e-cigarettes should not be directed at people under 18 given both the risk of addiction to nicotine and the fact that it will shortly be illegal to sell e-cigarettes to under 18s. The rule does not go far enough in protecting under 18s from exposure to marketing communications for e-cigarettes. Popular films aimed at adults which receive a youth rating from the British Board of Film Classification may still attract a large audience of under 18s even if this represents a small proportion of the total audience. For example, Skyfall as an adult orientated film and rated 12R was allowed to show alcohol advertisements. While the viewership of under 18s was only 12%, the film reached almost one fifth of the total UK population. A 10% threshold would better protect children and young people and help direct marketing communications to audiences that are overwhelming over 10 and reduce children and young people's exposure to e-cigarette promotions. We also feel it is particularly important to consider role of social media in advertising of these products given its particular appeal to children and young people and their engagement with it.	See 13.2
13.7	UKHF	Agree, notwithstanding points made in relation to other questions.	B/CAP agree.

13.8	CRUK	Agree in principle but consider a further restriction is warranted (citing Ofcom's alcohol research).	See 13.2
13.9	GSK	Agree but only for e-cigarettes that do not hold a marketing authorisation from MHRA.	These rules will also apply to ads for those products which are licensed as medicines. See 16.1
13.10	Nicoventures, NHS Grampian, MSSS, LCC, J&J	Agree with the proposal in principle but consider a post 9pm restriction is also required.	See 13.2
13.11	TICAP	Yes, but with discretion. If the programme does not explicitly aim to appeal to the younger audience, we cannot see the problem.	See 13.2

Rule 14: Radio Central Copy Clearance – Radio broadcasters must ensure advertisements for e-cigarettes are centrally cleared.

Question 22: Given BCAP’s policy consideration, do you agree that all advertisements for e-cigarettes must be centrally cleared? If you disagree, please explain why.		
14.1	Respondent making points in favour of the proposal:	BCAP’s evaluation
14.1	<p>ARNS, ASH Scot. Boots UK, Counterfactual, CRUK, DCTA, ECITA, FPH, GSK, Nicoventures, NELSA, NHS Grampian, NHS Lanarkshire, MSSS, SEC, PAGB, Fontem, IPA, NNA, RTCA, BHF, BRBC, CCC, RC&RACC, RCP&UKCTAS, SCOT, CIS, CEnTSA, LCC, TSI, PML, SPH, PV, Cygnet, HOM, TFF, WG, Dr C., SG, LCFT, RPS, SELITN, J&J, TSNW, Rowlands, PHS, NSTAG, TCRG, WSCC, WHOTS, TW, Mr B., Zandera, Ms B.</p>	<p>The organisations on the left agreed with the rule as proposed. A summary of significant points follows below:</p>
14.2	<p>ASH, ASH-W, BLF, HAS, FPH, Healthy Stadia, RCPCH, SSA, ADPH, BHF, CFNI, HOM, PHE, ASH, HTCSG, UKHF, SFNA, SFN, SHWB, STCPAB, SFSW, SFCDTA, RSPH, CIEH, WSSS, TC</p>	<p>Electronic cigarettes have been around for less than ten years and the market is still evolving. Advertising of these products is a relatively new phenomenon. Therefore we think that all broadcast electronic cigarette advertisements, both radio and TV, should require central clearance prior to publication/transmission. In addition advertisers should be recommended to submit non-broadcast advertisements, both print and electronic, to CAP for copy clearance before publication.</p>
		<p>BCAP agree and are implementing the rule as proposed.</p> <p>It is a licence requirement of broadcast services that the ads that they air comply with the BCAP Code. To this end all major UK TV broadcasters already maintain a pre-clearance regime operated independently by Clearcast. BCAP has therefore not previously found it necessary to mandate pre-clearance for TV advertising for particular sectors.</p> <p>Although central clearance for radio ads is provided for some ads by the RACC, the vast array of small, local advertisers and radio stations has meant that local clearance procedures are commonplace. The BCAP Code therefore requires certain categories of</p>

			<p>radio advertisements to be centrally cleared by the RACC. Those categories of radio advertisements have in common a clear potential to mislead, offend or harm. BCAP considers that procedure is necessary for e-cigarette ads also.</p> <p>CAP provides a free advice service for advertisers seeking guidance on compliance with the Codes. It currently reserves mandatory pre-clearance as a sanction for repeated or serious breaches of its Code.</p>
14.3	TICAP	Agree so long as this is not more restrictive than alcohol advertising.	This requirement is the same as for alcohol advertising.
14.5	RCP&UKCTAS	Inappropriate advertising should be prevented pro-actively by pre-approval, rather than reactively in response to complaints	See 14.2
14.6	CMO (DoH)	Support the proposal that radio broadcasters must ensure that advertisements are centrally cleared. Consider that the rule should also apply to television broadcasters. We already have examples of inappropriate advertisements for these products being withdrawn following complaints, after they were broadcast. Given the unusual nature of these products, which contain a highly addictive drug, it seems sensible to take this extra step to prevent inappropriate advertising and I am unclear why a distinction is made between radio and television broadcasts.	See 14.2
14.7	ECITA	Agree, particularly in the context of attempts to harmonise this system with that of those for other 'adult-only' products.	BCAP agrees.
14.8	RC&RACC	Yes. The RACC has been clearing ad campaigns for e-cigarette manufacturers on radio since 2011 and has expertise in the pre-clearance of e-cigarette advertising on radio. As an emerging sector and advertisement category facing both licensing by the MHRA and regulatory scrutiny, both RadioCentre and the RACC feel it is sensible for central clearance to continue for e-cigarette campaigns. RACC therefore recommends that the addition of "e-cigarettes" is added to BCAP Code Rule 31.1 (31.1.5) and to the "Special Category" list in Section 1 'Compliance'.	BCAP agrees and considers that the addition of the above rule to the dedicated section on e-cigarettes achieves this aim without also being added to the 'Special Category' list.
	Respondent making points against the	Summary of significant points:	CAP and BCAP's (B/CAP's) evaluation:

	proposal:		
14.9	RCR	Disagree – they should be treated as cigarettes and banned from radio.	See 1.49.

15. Additional questions: E-cigarettes which do not contain nicotine

Question 23: To what extent, if any, do you consider that new rules should apply to e-cigarettes that do not contain nicotine? Please provide any relevant evidence in support of your response.

Question 24: Do you consider that any additional rules should be considered specifically in relation to the advertising of e-cigarettes that do not contain nicotine? Please provide any relevant evidence in support of your response..

15.1	Respondent:	Summary of significant points:	CAP and BCAP's (B/CAP's) evaluation:
	<p>ARNS, ASH, ASH Scot., ASH-W, BLF, Boots UK, CAA, CMTA, CRUK, DCTA, ECITA, FPH, GSK, Healthy Stadia, HSA, ORG.A., Nicoventures, NELSA, NHS Grampian, NHS Lanarkshire, MSSS, SEC, PAGB, SSA, RCPCH, Fontem, NNA, RTCA, ADPH, BHF, BRBC, SCOT, CIS, CEnTSA, LCC, TSI, PML, SPH, PV, HOM, PHE, TFF, HAT, WG, HTCSG, SG, LCFT, RPS, UKHF, SELITN, J&J, Rowlands, LOTSA, PHS, NSTAG, SHWB, STCPAB, SFSW, SFCDTA, TCRG, WSCC, WHOTS, TW, Prof GW, Mr B., Ms B., RSPH, CIEH, WSSS, TC</p>	<p>The organisations listed on the left consider that the proposed rules should apply to e-cigarettes which do not contain nicotine.</p>	<p>B/CAP agree. B/CAP consider that the rules should apply to all electronic cigarettes and other vapour products irrespective of whether or not they contain nicotine. While such products do not present the potential for addiction to nicotine, they do present risks stemming from the absence of evidence in respect of their safety and, if not advertised in compliance with the new rules requiring the nature of the product to be made clear, the potential to cause confusion with tobacco products.</p>
15.2	<p>ASH, RCPCH, ADPH, CCC, CFNI, HAT, TSNW, SFNA, SFN, RSPH, CIEH, WSSS, TC</p>	<p>Electronic cigarettes not containing nicotine clearly have the potential to cause confusion if subject to a different set of advertising rules from nicotine-containing products. However, they may well perform a useful function for former tobacco users who have progressed to seeking to give up nicotine use altogether. Therefore, they should be subject to the same rules as other electronic cigarettes, subject to</p>	<p>B/CAP agree.</p>

		Rule 5 above.	
15.3	SFN	Anecdotally, Newcastle City Council's Public Safety and Regulation Services note that products such as shisha, whether using electronic or steam stones, are perceived by users, and in particular younger users, as being 'healthier' or 'cool'. It is of note that this trend has been picked up upon by local licensed premises who make provision of shisha, with no distinction regarding tobacco or otherwise in content a key part of their advertising on flyers and other mechanisms for example, social media. It is therefore important that the rules cover all tobacco and non-tobacco containing products.	See 15.1
15.4	Mr B	Absence of nicotine should not be used to suggest increased safety / less harmful etc.	B/CAP agree. See 3.7
15.5	WG	Non-nicotine containing e-cigarettes should include a message that these products do not include nicotine. Consideration should also be given to including a warning that these products are not suitable for under 18s.	See 5.3 and 5.20
15.6	Rowlands	The rules should be equally applicable to non-nicotine containing products. The act of vaping mirrors that of smoking and therefore normalises the activity regardless of whether the e-cigarette contains nicotine or not. It is often this physical act which perpetuates the smoking behaviours of the user to continue smoking/vaping. Furthermore, the products are unlikely to have undergone much safety assessment and therefore we should also be alert to the fact that products could be being promoted which could have widespread public health consequences from their use.	B/CAP agree.
15.7	J&J	Having e-cigarette product ranges that include both nicotine and nicotine-free variants under the same name should not be used as a means to advertise nicotine containing e-cigarettes.	B/CAP agree.
15.8	RPS	We consider that the new rules should apply to all e -cigarettes whether or not they contain nicotine. This is because we are taking a precautionary approach with regard to the carriers of propylene glycol and glycerin and other exipients. There is no long term safety data on the use of these products by way of deep inhalation to the lungs and the hazards of e-cigarettes might not emerge for several decades, as was the case with tobacco products. Already we have seen report of cases of lipoid pneumonia attributed to the glycerin used in the aerosols.	B/CAP agree.
15.9	ASH Scot	We agree with the principle behind this rule. However, as in our response to Question 20 above, we note that although some events that attract high viewership (e.g. prime time programming or sporting events) may not be 'directed at or likely to appeal' particularly to under 18s, they nevertheless are viewed by large numbers of	B/CAP agree.

		under 18s. We ask BCAP to consider this 'total impact' in its rules in addition to the existing scheduling restrictions.	
15.10	Boots UK	As the CAP code requires marketing communications to not be misleading and also to be socially responsible, there is an argument to say that e-cigarettes which do not contain nicotine would be caught principally by these requirements, particularly if the definition proposed in the consultation under 11.3 is adopted, as the definition specifically refers to nicotine containing vapour. Therefore, under this definition, a nicotine free e-cigarette cannot be an e-cigarette. Notwithstanding the response to Q. 23, this suggests that there may be additional rules and requirements for the products which do not contain nicotine over those that do. Accepting that nicotine is essentially a harmful product, it seems contradictory to consider imposing greater requirements on a nicotine free e-cigarette.	B/CAP agree.
15.11	CEnTSA	The group agree. The Children and Families Bill will introduce an age restriction on the supply of such products to under 18's. Business advice has already been provided suggesting that it is best practice (until legislation dictates) not to supply such products to under 18's. There have not been significant complaints around the supply of such products to under 18's,	B/CAP agree.
15.12	Counterfactual, Fontem	Should apply to all vapour products	B/CAP agree.
15.13	RCP&UKCTAS	It is inappropriate to distinguish on this basis. Many new generation electronic cigarettes are refillable. These rules should apply to any device intended for use as an alternative to smoking.	B/CAP agree.
15.14	ECITA	<p>We do not consider that there should be any difference in advertising approach for ecig products containing nicotine and those without; both products are intended for inhalation, and therefore it is essential that both are manufactured and marketed responsibly. The action of using an electronic cigarette with or without nicotine is designed to mimic the act of smoking, and therefore we do not believe that it is appropriate for MC/A to target non-smokers even if they do not contain nicotine.</p> <p>We have grave concerns about the emergence of the 'shisha' ecig market, most products of which do not contain nicotine, with marketing which appears to be targeted towards young people directly. We believe it is vitally important that these products are covered by these guidelines, to ensure that consumers of all ages are protected from potentially irresponsible advertising practices. The inclusion or lack of nicotine should have no impact on this, for the entire ecig sector.</p>	B/CAP agree. See 6.62.
15.15	Healthy Stadia	Rules should apply to hookah pipes, shisha pens (whether containing nicotine or	B/CAP agree. See 15.1

		not)	
15.16	BLF	The same rules should apply to electronic cigarettes which do not contain nicotine, as there is a real danger of re-normalising smoking behaviour. Products which look like cigarettes and do not contain nicotine should therefore be subject to the same rules as other nicotine-containing electronic cigarettes.	B/CAP agree.
15.17	PV	All rules set out in this consultation for e-cigarettes containing nicotine should also apply for e-cigarettes that do not contain nicotine. Without this principle, sweet-flavoured e-cigarettes which do not contain nicotine would be both appealing and available to young people and would contribute to the normalisation of smoking, something the Smokefree legislation in the UK has fought against.	B/CAP agree. See 1.14
15.18	IPA	Our understanding is that the recent amendments agreed by the European Commission, Council and Parliament to the EU Tobacco Products Directive, deal only with nicotine-containing products (NCPs).	B/CAP also understands this to be the case. See 1.14 and 18.19.
15.19	SEC	As Professor Robert West, Professor of Health Psychology and Director of Tobacco Studies at University College London recently said: "E-cigarettes are about as safe as you can get. We know about the health risks of nicotine. Nicotine is not what kills you when you smoke tobacco. E-cigarettes are probably about as safe as drinking coffee." That said, nicotine is an addictive substance, therefore it should be acceptable to discriminate positively in favour of e-cigarettes not containing nicotine, in the same way it should be possible to positively discriminate an e-cigarette from a tobacco cigarette.	B/CAP disagree. See 15.1
15.20	TICAP	If it is clearly stated in the advert that the product contains no nicotine then less restrictions should apply. We do not ban the advertising of soda because it "looks the same" as advertising for alcohol.	B/CAP disagree. See 15.1

16. Additional questions: E-cigarettes which are licensed as medicines

Question 25: To what extent, if any, do you consider that the above rules for e-cigarettes should apply to those which are licensed as medicines?			
16.1	<p>Respondent making points in favour of the proposal:</p> <p>ASH, ASH Scot., ASH-W, DCTA, ORG.A., MHRA, GSK, MSSS, RCPCH, IPA, NNA, RTCA, ADPH, BRBC, CCC, SCOT, CIS, TSI, NHS Lanarkshire, PHE, TFF, HAT, WG, HTCSG, Dr C., SG, LCFT, UKHF, TSNW, SFNA, Rowlands, SFN, NSTAG, SHWB, STCPAB, SFSW, SFCDTA, TCRG, WHOTS, Mr B., RSPH, CIEH, WSSS, TC, CEnTSA</p>	<p>Summary of significant points:</p> <p>The organisations listed on the left considered that the proposed rules should apply to e-cigarettes licensed as medicines.</p>	<p>CAP and BCAP's (B/CAP's) evaluation:</p> <p>B/CAP consider that the rules should apply to e-cigarettes which are licensed as medicines.</p> <p>Although such products will have had to meet stringent requirements in terms of their quality and efficacy, many of the concerns posed by their advertising remain the same as for consumer e-cigarettes; specifically the risks of renormalising tobacco-like products and smoking behaviours and potentially attracting children and young people to inhaled nicotine. Please note the response from the MHRA.</p>
16.2	MHRA	<p>Consider that all the proposed rules should apply with the exception of rule 11 which explicitly restricts the use of the products to over-18s. Current nicotine replacement therapy medicines are indicated for use in under-18s and it is likely that any e-cigarette products which gain a marketing authorisation will have similar indications for use. In addition to the proposed rules on targeting, protection for children would also continue to be provided by the existing rule 12.16 that medicines may not be promoted to children (under-16s). This reflects the legislative ban on advertising to children in the HMRs</p>	<p>B/CAP are not implementing draft rule 11.</p>
16.3	ASH, BLF, HAS, FPH, RCPCH, ADPH, BHF, CFNI, HAT, HTCSG (CHECK THIS LIST), RSPH, CIEH, WSSS,	<p>Consider that, as far as possible, the same rules should apply to electronic cigarettes that are licensed as medicines as to those that are not. This approach has the significant advantage of ensuring the simplest transition to the rules that will be required when the EU Tobacco Products Directive comes into effect, whilst also ensuring consistency in all permitted advertising of electronic cigarettes. So, for example, CAP rules would prohibit</p>	<p>B/CAP agree, however these rules do not seek to provide transition to the regime provided by the Tobacco Products Directive. B/CAP will take a view of the effect of that</p>

	TC	endorsement by celebrities and health professionals and free samples.	regime on their own rules when more is known about how it will be implemented. See 18.19.
16.4	Ms B	The same rules should apply as for other nicotine replacement therapy.	B/CAP understand that the MHRA are likely to license e-cigarettes in a similar way to NRT.
16.5	LOTSAs	Licensed products should be controlled in the same way as licensed medicines.	B/CAP agree.
16.6	PHS	Electronic-cigarettes that are licensed as medicines need to follow CAP and MHRA rules, like as other medical products. Their unique selling point will be the safety regulation and reassurances this brings to the consumer.	See 16.1
16.7	NELSA	We feel that the same rules should apply but that e-cigarettes that are licensed should be able to advertise this fact. We are conscious that health claims made be made with some of these products and are concerned that there should be independent verification of any scientific evidence that is being used to support their use to avoid tobacco companies sponsoring academic institutions to produce data to support their claims.	See 16.1
16.8	SPH	We would propose that products licensed as medicines should be able to include specific health claims, such as any health benefits as opposed to smoking tobacco or their use as aids to cutting down and stopping smoking, where they are well supported by scientific evidence.	B/CAP understand that this is the case.
16.9	BMA	The regulations for the marketing of e-cigarettes should reflect that there is insufficient peer reviewed evidence demonstrating their effectiveness as a quitting aid or in reducing tobacco consumption. Manufacturers of e-cigarettes are eligible to apply for a medicines licence from the MHRA for their products, upon demonstrating their safety, quality and efficacy. Licensed e-cigarettes should be free to make specific health claims about e-cigarettes and their effectiveness in helping smokers to cut down and quit smoking conventional cigarettes. The marketing communications of all unlicensed e-cigarettes should not imply that the products can be used for smoking cessation. The marketing of e-cigarettes not licensed as medicines should not imply any general health benefits, or use misleading language such as 'safe', 'healthier', or 'harmless'. Analysis of the growing market for e-cigarette suggests that these approaches are being used in marketing and advertising, as well as public relations communications. The BMA notes that in the UK, the Advertising Standards Authority has recently ruled that certain e-cigarette advertisements were considered misleading and made unsubstantiated claims relating to health. The BMA agrees that the marketing of e-cigarettes as an 'alternative to tobacco' does not directly imply a health or medicinal claim.	B/CAP agree.
16.10	ARNS	As part of smoking cessation campaigns.	Products require an authorisation

			from the MHRA in order to make smoking cessation and reduction claims.
16.11	Fontem	In principle we think that there should be minimal variation in the rules applying to e-cigarettes because in applying the same rules across the board, the potential for confusion, inconsistency and lack of clarity will be minimized. However, rule 3 should clearly enable e-cigarettes licensed as medicines to make accurate, relevant and approved health and usage claims, which are approved by the MHRA as packaging wording and /or in the summary of product characteristics.	B/CAP consider that the rules already achieve this.
16.12	Boots Nicoventures	UK, We would argue that marketing communications for e-cigarettes which are licensed medicines (and marketing which misleadingly makes false medicinal claims) should be the sole remit of the MHRA to regulate	See 16.1
16.13	ECITA, Grampian, Counterfactual, PML	NHS SEC, Medicinal products are an entirely different category, and as you point out in your explanatory notes, are covered by a separate Code. We do not see any need to blur this distinction. In the context of ecigs sold as consumer products, it seems entirely appropriate and proportionate to apply these sector-specific guidelines (with the modifications suggested herein), while leaving medicinal products under their own Code.	See 16.1
16.14	WSCC	Disagree with rule. While legislation permits authorised medicines or medical devices to make medicinal claims, these claims are based on compelling evidence. Based on current evidence, there is insufficient evidence that e-cigarettes are effective in quitting or cutting down smoking. Therefore, by allowing medicinal claims for e-cigarettes licenced as medicines, this would be a misleading claim that does not represent the current status of its effectiveness. E-cigarettes licenced as medicines should therefore not be allowed to make medicinal claims until sufficient and compelling evidence is available to support the claims made.	See 16.1. Authorising products as being capable of aiding smoking cessation / reduction within the medicines framework is the role of the MHRA.
16.15	TW	Consider medicinal products are an entirely different product. There is no need to blur the distinction; existing Code is sufficient.	See 16.1
16.16	Prof GW	Consider that the medicinal framework is sufficient	See 16.1
16.17	Nicoventures	We do not consider it is necessary or appropriate for the proposed rules to apply to products which are licensed by the MHRA. Promotions of medicines and medical devices are already subject to a proportionate regime of legislation and self-regulation that we understand works well in practice. Further, if an e-cigarette is licensed as a smoking cessation product, it should be able to compete with nicotine replacement therapy (NRT) products on equal footing (see comments below in relation to the proposed definition of e-cigarette).	See 16.1

		In addition, certain of the proposed rules may be problematic in the context of licensed products. For example, the requirement under Rule 4 (the need to make it clear that the product being advertised is an e-cigarette) may be inconsistent with the product name/description of pharmaceutical form as required by the MHRA; and the requirement under Rule 11 (the need to make it clear that the product is not suitable for under 18s) may be inconsistent with the Marketing Authorisation for the product, and hence the safety in use profile of the medicine as agreed with the MHRA	
16.18	PAGB	<p>These restrictions should not apply to e-cigarettes licensed as medicines. These products will have to comply with the rules and regulations applied to medicines and should comply with restrictions on medicines ie CAP Section 8, BCAP Section 11.</p> <p>Currently, there are licensed nicotine replacement products that can be used by children over 12 years of age. It is possible that e-cigarettes licensed as medicines would similarly be licensed for use by children less than 18 years of age. Inclusion of the suggested statement may deter adolescents from using stop smoking aids such as e-cigarettes which have a marketing authorisation from the MHRA, therefore it is important that this rule does not apply to these products.</p>	See 16.1
16.19	RCP&UKCTAS	Products that are licensed as medicines are subject to MHRA controls, which will allow advertising as smoking cessation and harm reduction products. We think this is appropriate for products that have met MHRA licensing requirements and hence are known to deliver nicotine effectively and cleanly.	See 16.1
16.20	J&J	Licensed e-cigarettes should be treated as other forms of licensed NRT and be controlled by the PAGB Code and Medicines legislation and CAP code for medicines.	See 16.1
16.21	TICAP	Disagree. E-cigs can be used as an alternative to smoking.	In order to make such claims, the product in question would require a licence from the MHRA.

17. Additional questions: Definition of e-cigarette

Question 26: Do you agree with the proposed definition of e-cigarette? If not please explain why.			
17.1	Respondent making comments on the proposal.	Summary of significant points: The respondents on the left agreed with the definition. Where a respondent has elsewhere stated that it favours the rules applying to e-cigarettes which do not	CAP and BCAP's (B/CAP's) evaluation: B/CAP have agreed a final definition which is based on the finalised definition in the Tobacco

	ASH, ASH Scot, ASH-W, BLF, CAA, CRUK, CMTA, FPH, GSK, HAS, Healthy Stadia, ORG.A., MSSS, NELSA, NHS Grampian, PAGB, RCPCH, SSA, Fontem, IPA, RTCA, ADPH, BHF, BRBC, CCC, CFNI, SCOT, CIS, CEnTSA, LCC, PML, SPH, HOM, PHE, TFF, HAT, WG, HTCSCG, Dr C., SG, LCFT, UKHF, TSNW, SFNA, Rowlands, SFN, PHS, NSTAG, SHWB, STCPAB, SFSW, TCRG, WSCC, WHOTS, Mr B., RSPH, CIEH, WSSS, TC	contain nicotine it should be assumed that their support is contingent on the definition being expanded to encompass such products.	Products Directive, augmented to make clear that the rules cover ads for e-cigarettes, irrespective of whether or not they contain nicotine, and also framed to make clear that the rule apply to the full range of products, including e-shisha and e-hooka-type products, e-liquids etc. B/CAP have also added an additional criterion to catch ads for products that fulfil the same purpose and / or have the same potential for harm.
17.2	ASH Scot,	Yes but to include all e-cigs that don't contain nicotine.	See 17.1
17.3	Cygnnet	Agree in general with the inclusion of a definition for electronic cigarettes, but it should be aligned with the definition in the TPD rather than amending it. Guidance should also be provided as to what is meant by a "refill container" based on the definition provided in the amended TPD.	See 17.1
17.4	RPS	Yes – expanded to include e-cigs that don't contain nicotine.	See 17.1
17.5	Rowlands	Yes. We are aware of at least one product which will be coming to market which uses an aerosol to 'charge' a cigarette-style device containing a one-way valve which releases the atomised nicotine. We believe this definition covers this device despite the device not being an electronic cigarette.	See 17.1
17.6	SELITN	There should be a phrase which indicates that new products which have essentially the same purpose will be caught even if they differ from the current versions of the e-cig or have a different name eg e-shisha pens, add "or similar products which may or may not contain nicotine" to capture new products.	See 17.1
17.7	Counterfactual	Yes. This is a minor variation and improvement on the definition used in the EU	See 17.1

		Tobacco Products Directive. The definition should be extended to all vapour devices, not just those using nicotine. The rules also need to apply to liquids sold separately from any device. This could be achieved either by changing the rules throughout to refer to both e-cigarettes and e-liquids, or the addition of the following to the definition above: the rules applicable to e-cigarettes will also apply to refill containers and nicotine containing liquids or solids sold separately.	
17.8	PV	We agree with the proposed definition. We would like a line to be added to synonymise better with the World Health Organization's definition which refers to e-cigarettes as ENDS (electronic nicotine delivery systems).	See 17.1
17.9	Boots UK	Agree in part, though it creates uncertainty over the status of nicotine free e-cigarettes and also needs to clarify whether licensed nicotine replacement products are included or not. Under the proposed definition in 11.3, some inhalators which are licensed nicotine replacement products would meet the technical definition.	See 17.1
17.10	LOTSAs	There should be a phrase which indicates that new products which have essentially the same purpose will be caught even if they differ from the current versions of the e-cig or have a different name eg e-shisha pens, add "or similar products which may or may not contain nicotine" to capture new products.	See 17.1
17.11	Ms B.	Disagree. Definition is too open. 'Any component thereof' brings in torch batteries, wire, cotton, wicks.	B/CAP consider that the ASA may reasonably apply the rules to such products in circumstances where they are presented as e-cigarette components.
17.12	J&J	The definition needs to include reference to a heating element to distinguish it from products such as Nicorette Inhalator. E liquid also needs to be included in the definition.	B/CAP consider that the rules should also apply to ads for Inhalator products.
17.13	TW	Disagree with the definition. Does not take into account complexity and range of products currently available. Doesn't reference non-nicotine products or e-liquids.	See 17.1
17.14	ECITA	Disagree. We do not believe that this is a useful definition, not least because it does not cover the points raised above concerning non-nicotine products. There is also a need to include the 'e-liquids' sold separately.	See 17.1
17.15	TICAP	Attempts to "slip through a loophole" based upon the general visibility of the inhaled vapor should not be accepted and would clearly be designed to allow	See 17.1

		for separate and financially beneficial treatment of Big Pharma nicotine inhaler products. While Big Pharma lobbyists may prefer the original wording, any rule makers honestly concerned about health will support a change to the suggested new wording.	
17.16	RCP&UKCTAS	No. The definition excludes products currently in development that deliver nicotine in a formulation that resembles a cigarette, but do not use electronic cigarette technology. The definition should change to include other nicotine containing devices (with the exception of those licensed as medicines).	See 17.1
17.17	NNA	The proposed definition is too broad, particularly the inclusion of the words “or any component thereof”. A torch battery is a component of an ecigarette, as may be a ball of knitting yarn (for atomiser wicks) or a bottle of food flavouring. We suggest 'can be used for' be substituted with 'intended for the purpose of'.	See 17.1 and 17.11
17.18	SEC	No. This definition fails to take into account the range of products available; at least 5,000 at present, nor does it take into account e-liquids which can be sold separately. Finally, it makes no reference to e-cigarettes and related products that do not contain nicotine.	See 17.1
17.19	Nicoventures	<p>Please note that the definition, as proposed, would not catch liquids which are sold separately or e-cigarettes that do not contain nicotine. We believe liquids sold separately should be included in the definition. Whether or not e-cigarettes that do not contain nicotine are included should be borne in mind in connection with the decision as to whether the rules should apply to such e-cigarettes (see our response to Q23).</p> <p>We also note that the definition would catch some but not all NRT products (for example it would catch inhalator type products but not NRT gums and patches). This is relevant if it is determined that the proposed rules should apply to “e-cigarettes” which are licensed by the MHRA. We believe all NRT and licensed e-cigarettes should be treated the same, regardless of format, and the definition should therefore be amended if licensed products are determined to be subject to the rules.</p>	<p>See 17.1</p> <p>B/CAP agree.</p>

18: Additional questions: Other rules and comments

<p>Question 27: Are there any other rules which you believe CAP and BCAP should consider implementing in relation to the advertising of e-cigarettes? Please provide as much detail as possible and any evidence you consider supports the relevant restrictions.</p> <p>Question 28: Are there any other comments you wish to make in relation to the advertising of e-cigarettes and BCAP's consideration of this issue?</p>			
18.1	<p>ASH, ASH Scot, ASH-W, BLF, CMTA, CRUK, HAS, FPH, RCPCH, SSA, RCTA, ADPH, BHF, BrBC, CCC, CFNI, RCP&UKCTAS, CEnTSA, LCC, SPH, HOM, TFF, HAT, WG, HTCSG, UKHF, TSNW, PHS, NSTAG, SHWB, TCRG, RSPH, CIEH, WSSS, TC, SFSW, SFN, SFCDTA</p>	<p>Considered that the applicability of the rules to social media was unclear and considered that needed to be clarified.</p>	<p>The CAP Code applies to all marketing communications online, including those on social media and marketers' own websites.</p>
18.2	<p>ASH, ASH-W, BLF, CMTA, FPH, HAS, NELSA, RCPCH, SSA, RTCA, ADPH, BrBC, CCC, CFNI, TSI, SPH, PHE, HAT, HTCSG, RSPH, CIEH, WSSS, TC, LCC, SFN, NSTAG, SFSW, SFCDTA, STCPAB</p>	<p>The organisations on the left all considered that advertising should contain reference to the need to store and use electronic cigarettes, refill containers, chargers and other nicotine containing products safely and away from children / animals.</p>	<p>See 8.4</p>
18.3	<p>ASH, ASH Scot, BLF, CMTA, CRUK, HAS, FPH, SSA, ADPH, BHF, CFNI, RCP&UKCTAS, SPH, HOM, PHE, UKHF, WHOTS, RSPH, CIEH, WSSS, TC, SFSW, SFN, SFCDTA</p>	<p>The organisations on the left wished to note that the e-cigarette market and the evidence around it were evolving rapidly and therefore considered that the rules would need to be monitored and revised in light of emerging evidence etc.</p>	<p>CAP and BCAP are always open to receiving evidence supporting calls for regulatory change. B/CAP intend to review the rules 12 months after their implementation.</p>

18.4	UOS	<p>When children need to be protected from the negative impacts of advertising, mandatory controls on the amount of advertising present the only effective solution, and these controls need to be comprehensive. Whilst we are now dealing with a new product in the electronic cigarette (e-cigarette), the increasing involvement of the tobacco multinationals in the sector means that we are faced with the same industry. There is also every need to expect, and guard against, the use of e-cigarettes by these companies to promote their fiscally much more important tobacco business. It is important, of course, to recognise the possible benefits of e-cigarettes for addicted adult smokers, and ensure regulation does nothing to impede their access to them. In this sense, the e-cigarette is more akin to alcohol than tobacco – the advertising should reach adults but not children. Sadly, voluntary codes on advertising have been as unsuccessful for alcohol as they have for tobacco.</p> <p>Trying to control content is, then, futile. The solution has to be to regulate the amount of advertising. However extensive experience from tobacco shows that such controls must be comprehensive; partial bans do not work because promotional budgets migrate to uncontrolled channels. In the UK, for instance, the disappearance of tobacco advertising from TV in 1965 had no perceptible impact on overall tobacco adspend, which increased year on year throughout the decade.</p> <p>The answer then, if we want to protect children from e-cigarette advertising and promotion, is a complete ban. There is no evidence to show this will impede adult access to e-cigarettes, or that such controls have prevented adults from accessing tobacco or prescription medicines. Failing an outright ban, the next best solution is to regulate what can, rather than cannot, be said and shown in e-cigarette advertising. This is the approach adopted in France to regulate alcohol advertising. Such a solution would permit the promotion of e-cigarettes in media that adults use. Here, advertisers would only be permitted to make verifiable factual statements about their products, such as nicotine strength, composition, place of origin, means of production and patterns of consumption. All advertisements would also be required to carry explicit health information.</p>	<p>B/CAP consider that there are significant differences between e-cigarettes and tobacco products to merit a different regulatory approach. As this consultation process has shown, many prominent public health organisations consider that there is significant value in the responsible advertising of e-cigarettes, although views understandably differ on what “responsible” means in this context.</p> <p>CAP / BCAP work within a legal framework and have a role to set proportionate standards that balance the need to right of advertisers to sell legal products with the need to protect the public from material that might be harmful to them. CAP and BCAP believe that these rules achieve that aim but will continue to be receptive to evidence-based calls for regulatory change.</p>
18.5	SFSW	<p>Consider that e-cigarettes should not be allowed to be marketed on the basis of their flavour(s). We are concerned that such promotions could be attractive to non-smokers and non-nicotine users, particularly children. We believe that a further rule should be developed to prohibit e-cigarette marketing communications and advertisements on the basis of their flavour.</p>	See 1.14

18.6	TW	CAP and BCAP should develop a code of practice for individuals making public statements about e-cigarettes to ensure accuracy.	B/CAP's respective remits cover advertising only. In those circumstances where such communications are advertising within the remit of the CAP and BCAP Codes, any such statements would need to be compliant with any relevant rules. Aside from that, B/CAP do not have a role in regulating statements made by charities, private individuals etc.
18.7	Counterfactual	Yes. Communications made by health and medical charities working in this field should be understood as marketing communications and partly fund-raising activities peripheral to their core research or membership operations. I would like to see a code of practice for charities that make public statements in this field - much of which is 'anti-advertising' and would not meet the 'legal, honest, decent and truthful' standards to be set for e-cigarette advertisers. There are many misleading statements, but little recourse for individuals or businesses harmed or misled by such statements	See 18.6
18.8	WSCC	E-cigarettes advertisements should not be sexually suggestive. A recent television advert received a large number of complaints by viewers regarding the content and message sent out. The marketing tactics used by the tobacco industry has historically used seductive images to sell tobacco. These tactics should not be allowed for e-cigarette advertisements as it draws similarities to tobacco advertisement. It is also important to remember that unlike other smoking quit aids, e-cigarettes are promoted in the same way that cigarettes were before tobacco marketing was banned. It gives rise to fears that these promotions may serve to make smoking once again appear to be normative and desirable behaviour. Therefore, while advertising of products should be allowed, there must be caution in what is allowed in these adverts so that they do not send out the wrong message. The second point we would like to raise is regarding product placement of e-cigarettes in shows. Although this is outside the remit of this consultation, we would draw attention to the likelihood of tobacco companies using the visual display of e-cigarettes in shows as a form of advertisement. We would urge the committees to consider this issue and start putting in place rules limiting/preventing product placement of e-cigarettes.	See 1.9. B/CAP have provided rules to prevent links with tobacco branding and promotion of tobacco products.
18.9	LOTSAs, SELITN	Concerned about e-cigarette companies associating themselves with public health campaigns.	See 3.13
18.10	CRUK, TFF	Consider that e-cigarettes should not be marketed on the basis of their	See 1.14

		flavours, which could appeal to non-nicotine users, non-smokers and children.	
18.11	CEnTSA	<p>Care needs to be taken around cinema advertising of such products and whether advertising is shown prior to and around films below an 18 certification.</p> <p>Association with sports needs to be avoided in and around venues and on kit. There was also discussion around 'pop up' shops in shopping precincts and how the stall holders approach potential customers; they should not be approaching people who look under 25; this is also the case for any demonstrations of the products. Also concerned about "Volume" Control – e.g. flooding the market with a particular product on every billboard in a close proximity. Advertisers should not imply that it's a "Safe Product"</p>	<p>Cinema is a non-broadcast medium and advertising must comply with the CAP Code. BBFC certifications indicate minimum ages below which the specific content is not judged to be suitable; they do not necessarily indicate the likely age of audiences for the film in question.</p> <p>In the event of complaint about targeting the ASA would assess the media and context and any available information about the audience profile before reaching a decision.</p> <p>See 1.35, 1.32 and 3.7</p>
18.12	Mr B.,	Consider age-gating followed by a warning page is appropriate. Consider that widespread advertising will help normalise and advertising restrictions should be the same as tobacco. Compulsory pre-clearance should be required at a cost.	See 1.49, 3.7 12.15 and 14.2
18.13	ECITA	The rules should apply to all ads regardless of who places them, including health and medical charities working in this field.	See 18.6
18.14	GSK	Consider that sampling of all e-cigarettes should be prohibited, as this could encourage non nicotine users to try these products. While the advertising codes themselves may not be able to prohibit the actual sampling activity, we seek a rule that prohibits any marketing communications/advertisements relating to sampling.	The straightforward act of giving a product away for free would not necessarily fall with the remit of the CAP Code. In the event that such activity was part of a broad promotional campaign then it is likely that the marketing around the giving away of the product would be within the remit of the Code as a sales promotion, although the ASA would have to judge individual cases on their own merits.
18.15	Sandwell Metropolitan	Principles of public health evidence-based practice are fundamental to the	See 1.49

	Borough Council	delivery of tobacco control. Although there is an emerging evidence-base for e-cigarettes and ENDS there is still no scientific verification from a competent national regulatory body the devices are safe and effective. WHO advise against their use. Because of that and because of the potential to renormalise tobacco, consider that section 10 should not be amended and ECs should be brought in line with the rules governing tobacco products.	
18.16	Healthy Stadia	<p>E-cigarette brands should not be associated directly or indirectly with amateur or professional sports. We have specific concerns about the advertising and marketing tactics already employed by e-cigarette manufacturers and brand holders in relation to sports events, in particular the targeting of a younger audience and people who do not currently use conventional tobacco products. Such tactics that we believe should be considered and ultimately prohibited under the new rules include offering free sample products (with examples of samples being given away without age checks), placement of e-cigarette vending machines inside stadia (with no age supervision), promotion and availability to purchase of e-cigarettes at club sales kiosks (without age checks), direct sponsorship of professional sports clubs and/or stadia, with e-cigarette brand names appearing on club shirts (both senior and junior shirts) and across club marketing channels</p> <p>We also believe that owing to the inherent relationship between youth culture and sport at both amateur and professional level, any forms of sponsorship, advertising and marketing of e-cigarettes that are within the context of sport need to be given serious consideration as to whether they are stimulating new users of e-cigarette products who are not traditional smokers, in particular young people. If advertising and marketing of e-cigarettes through sport is allowed to continue, we would strongly advocate a new code of conduct to be developed between industry stakeholders (sport, advertising, e-cigarette brands) to clarify any future activities.</p>	B/CAP do not have a regulatory role in relation to the placement of vending machines or sales activity at kiosks / shops. See 1.35 and 18.14.
18.17	J&J	Free sampling or vouchers relating to the supply of free samples of e-cigarettes should not be allowed as this is likely to encourage use by non-smokers. Sampling would encourage a blasé attitude to their use which may encourage younger individuals to try them before their attitudes to nicotine use have become established.	See 18.14
18.18	SEC	Misleading statements about e-cigs made by charities / public health professionals. Would like these to be seen as marcomms and would appreciate a specific regulatory regime for such statements in addition to the rules proposed here.	See 18.6

18.19	SG	The rules should also support the approach set out in the recently agreed EU Tobacco Products Directive and the World Health Organisation's Framework Convention on Tobacco Control Article 5.3.	<p>The new European Tobacco Products Directive governing the manufacture, presentation and sale of tobacco and related products (including e-cigarettes) was signed on 3 April 2014. The UK Government is required to transpose its provisions by 20 May 2016, with a further transitional period for non-compliant e-cigarette products until 20 November 2016. It will allow e-cigarettes to remain as consumer goods, subject to various quality controls and limitations on nicotine content, however marketers wishing to apply for a medicines authorisation will be able to do so. Additionally there will be prohibitions on advertising and CAP and BCAP understand that the Department of Health are now working to establish what those restrictions will mean in practice.</p> <p>The new rules do not pre-empt the requirements of the Directive but serve as an interim measure. When more is known about the effect of the Directive in the UK, CAP and BCAP will clarify what role their Codes might have in future.</p>
18.20	Boots UK	As and when e-cigarettes which are licensed medicines become available, clear distinction between marketing communications for unlicensed and licensed products need to be made and therefore clarity must be provided by both CAP/ ASA and the MHRA and CAP must take into account future developments and medicines advertising requirements when drafting any specific e-cigarette rules or guidance. This would be especially relevant when a marketer is responsible for (either manufacturing or retailing) both licensed and unlicensed products in order to provide clarity to the marketer and avoid consumers being misled. The ASA / CAP view must be consistent.	The HMRs already require that the advertising of a medicinal product is set out in such a way that the product is clearly identified as a medicinal product. These new rules prevent ads for unlicensed products from making medicinal claims or health claims and any attempt by a marketer to present an unlicensed product as a licensed medicine would breach several rules in this section. In circumstances when a marketer has developed a licensed and unlicensed product they will need to exercise caution to ensure that they do not imply either that unlicensed products are medicines or that they have their benefits.
18.21	NHS Grampian	Rules governing tobacco products should apply to e-cigarettes. Since they have the marked capacity to create nicotine addiction, and therefore a	See 1.49

		vulnerability to tobacco smoking, the rules in Section 21 of the CAP code and Section 10 of the BCAP code should apply.	
18.22	PV	<p>Rules have not focussed on online. Further e-cigarette marketing online occurs through the use of contests and giveaways; the social responsibility of this kind of marketing needs to be more stringently assessed.</p> <p>Pharmacy Voice encourages the monitoring of e-cigarette user demographics as advertising becomes more prevalent. Should users shift from smokers and ex-smokers toward more non-smokers and younger people, these proposed rules will need to be reconsidered.</p>	<p>See 12.4.</p> <p>B/CAP will be willing to review evidence-based requests for regulatory change.</p>
18.23	PHS	There needs to be continued monitoring of uptake of electronic cigarettes among non-smokers and children. If uptake increases in these two groups then further reconsideration of advertising regulations need to be undertaken.	See 18.24
18.24	NSTAG	There is no reference to sport sponsorship and the link with health, should this be considered as part of this consultation. Also rules regarding product placement and music videos should be considered as part of this consultation.	See 18.11 and 9.20
18.25	ASH Scot. SCOT, CIS	We would also recommend, in line with the World Health Organisation's Framework Convention on Tobacco Control Article 5.3 on the protection of public health policies from the vested interest of the tobacco industry, that future consultations on matters pertaining to tobacco control require respondents to explicitly disclose any associations they have with those involved in the manufacture or sale of tobacco products.	Since the close of the consultation B/CAP have sought clarity from relevant commercial respondents to clarify what relationship if any they might have with a tobacco company. Companies which have a material relationship are highlighted in the table of respondents at the beginning of this document.
18.26	BrBC	There is no reference to sport sponsorship, consider that B/CAP may wish to consider this as part of this consultation.	See 1.35
18.27	Counterfactual	E-cigarettes are significantly less risky than both cigarettes and alcohol. E-cigarettes do not cause intoxication and violence or have many of the chronic health impacts of excessive alcohol consumption. It would be wise therefore to regard application of the alcohol restrictions to e-cigarettes as an outer boundary in terms of a proportionate response to risks.	B/CAP have looked to some of the rules in the Alcohol and Gambling sections when considering how best to limit, for example, the exposure of children and young people to e-cigarette advertising, however it is not the case that either section has been copied directly. The content restrictions in the Alcohol and Gambling sections are far more extensive speaking, as they do, to the greater risks posed by those products, and

			the evidence base for those risks.
18.28	J&J	As per latest EU Tobacco Directive all e-cigarettes not licensed as medicines should have a maximum nicotine concentration level no more than 20mg/ml, therefore we advise e-cigarettes with a level above this concentration should not be advertised.	See 18.19
18.29	NHS Grampian	Advertising should be subject to a levy of 10% of campaign costs. This money should be directed into NHS supported efforts to prevent young people being recruited into nicotine addiction	Although the self-regulatory system is funded by a levy on advertising spend B/CAP have no role in setting or collecting that levy, nor do they have a role in creating new such levies or the funding of health services.
18.30	FPH	Consider that the rules should prevent imagery that promotes sexual or sporting prowess,	See 1.9
18.31	Healthy Stadia	Healthy Stadia believes that the proposed rules must apply to all forms of sponsorship, advertising and marketing, including digital media, social media, ambient media, events etc. We also believe that the proposed rules need to be revised in the light of emerging evidence. Use of e-cigarettes will be prohibited at all Barclay's Premier League football clubs from the start of the 2014/15 season, with a similar agreement amongst clubs playing in Rugby Union's Aviva Premiership. Consider that if such products are not deemed safe or appropriate for use at sports events, surely the same should apply in terms of advertising and marketing such products.	See 12.4 and 18.11.
18.32	Prof GW	Question whether the rules will apply to non-commercial advertising for example social marketing from public health and similar agencies.	See 18.6
18.33	PAGB	As per the latest EU Tobacco Directive all e-cigarettes not licensed as medicines should have a maximum nicotine concentration level of no more than 20mg/ml, therefore we advise e-cigarettes with a level above this concentration should not be advertised. Guidance on suitability of comparative advertising claims is needed. We suggest that these rules should be reviewed on implementation of the new Tobacco Products Directive in 2016 or should new technology develop that is significantly different from the devices that are currently available.	See 18.19 Comparative advertising claims will need to comply with the well-established provisions provided in the "Misleading Advertising" sections of both Codes. B/CAP will conduct a formal review of the rules after 12 months. When more is known about the implementation of the TPD, B/CAP will be able to

			clarify what role their Codes will have.
18.34	Fontem	Where quality statements are made, including those regarding other ingredients, these must be substantiated.	Factual statements about products will need to be substantiated in line with the requirements set out in the Misleading Advertising sections of both Codes.
18.35	RC&RACC	The RACC recommends that B/CAP issue a Help Note to guide broadcasters, non-broadcast media and advertisers on the practical interpretation of the new rules. RACC suggests that guidance, based on past ASA rulings, should cover the acceptability of statements such as “no chemicals”/“no tar”/“low tar” and switching from cigarettes to e-cigarettes.	B/CAP intends to publish guidance once the rules are in place. The rules make clear that alternative claims are acceptable for unlicensed products but that smoking cessation claims are not. Substantiated factual statements that are not health or medicinal claims may be made.
18.36	RCR	E-cigarettes are extremely addictive and should be treated as cigarettes in terms of advertising. There is no evidence as to the long term effects of nicotine inhalation. It is probably less dangerous than smoking but the risks are not well understood, hence the need to limit advertising. E-cigarettes (unlike other Nicotine Replacement Therapies) do not dissociate the smoking behaviour from the addictive drug and do not therefore encourage, assist and/or promote smoking cessation and must be treated as cigarettes.	See 1.49
18.37	HSE	Nicotine is designated as a hazardous chemical substance and has a harmonised classification which should be applied throughout the European Union. Suppliers of ECs therefore have obligations under the Chemical (Hazard Information and Packaging for Supply) Regulations 2009 (CHIP), until 1 June 2015, then under EU Regulation No 1272/2008 on the classification, labelling and packaging of substances and mixtures (CLP). In both cases, if a member of the public can purchase a dangerous (CHIP) or hazardous (CLP) chemical without having first sight of the label, then the advertisement must mention the type of hazards indicated on the label. Those responsible for placing electronic cigarettes on the market will need to consider carefully whether or not they have duties under the legislation described above and, if they do, ensure that they comply with the relevant advertising provisions. The appropriate classification, labelling and packaging of electronic cigarettes is the responsibility of the supplier and will depend on the chemicals present after classification has been done	B/CAP note this information and have added a paragraph at the beginning of their respective Code sections to reflect it.
18.38	SFN	There is no reference to product placement of electronic cigarettes or their use in television programmes popular with young people under the age of 18 years. Smoke Free Newcastle would urge clarity that these rules apply equally to broadcast television and film media. For example electronic	See 9.20

		cigarettes have been shown to be used in the soap opera East Enders, a programme regularly watched by those under the age of 18 years.	
18.39	Mr E	Concerned about the placement of e-cigarettes at tills near sweets will not protect children	B/CAP do not regulate the placement of products in-store.
18.40	STCPAB	A further point we feel needs to be considered is safeguarding against marketing and advertising of e-cigarettes to pregnant women and women who are breastfeeding. As highlighted earlier we do not yet have full understanding of the safety and efficacy of e-cigarette products.	B/CAP do not seek to prevent specific advertising executions but have prohibited (direct or implied) medicinal and health claims. The ASA will judge individual ads on their own merits.
18.41	CMO (DoH)	The consultation document provides an excellent summary of the concerns about short and long term safety of the products, the impact on children and young people and the possibility of renormalisation of smoking in public places. This has to be set alongside the possible, though as yet unproven potential for harm reduction when these devices are used as part of a smoking cessation programme. [Notwithstanding the comment made in relation to Rule 14 (Q22)] the proposed rules seem to represent a proportionate response which brings clarity to an issue in which uncertainty is leading to confusion and concern. I support the wording of all of the proposed rules but all of these measures are necessary and I would not want the proposal to be weakened in any way. Research into the safety and effectiveness of these products is accumulating quickly and in a couple of years we may have much better evidence of the true health impact of these products which may cause us to reappraise the marketing rules. It would be helpful if a regular review process were established to revisit the proposed rules in the light of this rapid pace of change.	B/CAP welcome the Chief Medical Officer's support, but have elected not to implement several of the rules upon which they consulted. More information is given in the relevant sections of this Evaluation and in the Regulatory Statement, but B/CAP do not consider that their decision not to implement those rules represents an overall reduction in the protection offered. B/CAP intend to review the effect of the rules 12 months after their implementation.
18.42	Ms C	Considers an outright ban is required for ads when they are visible to children and young people, for example on the sides of buses.	See 1.49
18.43	Mr H.	Considers that no images of cigarettes or tobacco should be shown in advertising, promotion or point of sale material. Concerned by the indistinguishability between the products.	See 2.3 B/CAP do not regulate point of sale material unless it relates to a sales promotion.
18.44	Ms H	Consider that e-should not be advertised. Nicotine is extremely toxic.	See 1.49
18.45	Ms M.	Is absolutely disgusted that these products are being advertised pre-watershed. Surely the best way to protect children and young people from nicotine addiction is to make sure that they cannot possibly see these adverts during daytime television. I would prefer if they were not advertised at all, or only to be marketed as products that could help the user give up	B/CAP have put in scheduling and content controls to answer these concerns. See 13.2

		smoking as nicotine replacement products usually are. But I do not think that any advertisements for these products should be shown before 9pm.	
18.46	Mr S.	Considers that the safety case is not properly established and the advertising of an addictive product is perverse. There is an obvious relationship between e-cigarettes and tobacco cigarettes so there is a high risk of encouraging conventional smoking. Considers a ban is warranted.	See 1.49.
18.47	Mr S(2)	Safety is unproven. Considers that ads for e-cigarettes should be restricted in the same way as for tobacco products.	See 1.49
18.48	Mr S(3)	Considers that under 18s should not be allowed to buy them.	B/CAP do not have a regulatory role in deciding to what age groups products may or may not be sold.
18.49	A coalition of the e-cigarette companies	Consider that CAP / BCAP's draft rules mirror very closely the industry's view on the principles that should be applied to all advertising of e-cigarettes. Consider that that e-cigarettes should be marketed responsibly and by this we mean that marketing communications should only be directed at adults, existing smokers or existing users of other nicotine products. Also that nothing in marketing communications should be aimed at promoting the use of combustion tobacco products.	B/CAP agree and consider that the rule framework achieves these aims.