

Consultation response

CAP & BCAP

Consultation on the marketing of e-cigarettes: proposals for new rules

25 April 2014

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General comments

Pharmacy Voice (PV) represents community pharmacy owners with the principal aim of enabling community pharmacy to fulfil its potential in playing an expanded role as a healthcare provider of choice. Its founder members are the Association of Independent Multiple pharmacies (AIMp), the Company Chemists' Association (CCA) and the National Pharmacy Association (NPA). We speak for the owners of over 11,000 community pharmacies in England on issues that matter to all those involved in health and social care and we reflect the diverse interests of the different parts of the community pharmacy sector.

Pharmacy Voice supports the rules proposed in this consultation and is pleased that the CAP and BCAP are consulting on this area. We believe that a clearer framework needs to be provided by the CAP and BCAP in order to ensure responsible advertising of these products.

The sale of e-cigarettes from community pharmacies is becoming more prevalent. Greater regulation is required to standardise these devices and provide greater assurances for patients and the public. Pharmacy Voice supports the Medicines and Healthcare products Regulatory Agency¹ (MHRA) position that these devices should be licensed as medicines for use as a smoking cessation aid as soon as possible. This regulatory change will require manufacturers to present data on the quality of their products, how they deliver nicotine to the body and how they compare with currently available Nicotine Replacement Therapy (NRT) products.

Pharmacy Voice is supportive of advertising which encourages smokers to exchange tobacco products for e-cigarettes. Advertisers of e-cigarettes should use a harm reduction approach which encourages committed smokers who cannot or will not stop smoking to turn towards using nicotine in a less harmful form.

Pharmacy Voice advocates the inclusion of a line in e-cigarette advertisements that encourages the public to seek guidance from a healthcare professional, such as a pharmacist, when looking to purchase one of these products.

¹ MHRA (2013) Nicotine containing products. <http://www.mhra.gov.uk/Safetyinformation/Generalsafetyinformationandadvice/Product-specificinformationandadvice/Product-specificinformationandadvice-M-T/Nicotinecontainingproducts/index.htm>

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

Pharmacy Voice agrees 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.

Question 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?

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.

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. 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.

Pharmacy Voice supports this rule.

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?

The best way to prevent indirect promotion of tobacco products is to ensure all e-cigarette advertisements are clear in stating exactly what the product advertised is, that it does not contain tobacco but instead presents an alternative to tobacco.

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.

Pharmacy Voice agrees with the proposal to prohibit health claims for e-cigarettes until more robust clinical studies have been conducted which can conclude that a relationship exists between an e-cigarette, or one of its constituents, and health.

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.

Pharmacy Voice agrees with the proposed definition of health claims for the purposes of 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.

Until e-cigarette brands have obtained a license from the MHRA to regulate these products and align them with NRT products, medicinal claims should be prohibited. Licensing will help to regulate the products to ensure that the safety, effectiveness and reliability are maintained and that promotion to non-smokers is prohibited.

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.

Pharmacy Voice agrees with the inclusion and wording of this rule. All marketing communications and advertisements must be clear in stating what the product is and what it should be used for. 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.

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.

Pharmacy Voice agrees with the inclusion and wording of this rule. 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.

Rule 6: Marketing communications / advertisements must not encourage non-smokers or non-nicotine-users to use e-cigarettes. Question 10: 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.

Pharmacy Voice agrees with the inclusion and wording of this rule.

Question 11: 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.

Until further clinical studies have been carried out to determine the short and long-term effects of e-cigarette usage, all marketing of these devices should be explicitly addressed to existing nicotine users

as a harm reduction strategy to reduce reliance on tobacco. We do not want the advertising of e-cigarettes to invoke interest of non-smokers in these devices, especially children.

Presently there is very little evidence for the use of e-cigarettes by never-smokers or non-users of nicotine. The usage of these devices among smokers and ex-smokers has increased steadily from 2010-2013 but has not increased among those who have never smoked. Action on Smoking and Health (ASH) commissioned surveys on e-cigarette use in 2010-2013 and found that, among adults, e-cigarette use has grown among smokers and ex-smokers and remains at 0% among those who have never smoked.² In 2013, 91% of smokers and 71% of non-smokers had heard of e-cigarettes. Among those who have never smoked, 1% reported having tried them and 0% reported using them currently (study of 12,170 adults).

Additionally in 2013, regular use of e-cigarettes among children was extremely rare. According to ASH, among young people who have never smoked 0% report continued e-cigarette use and 0% expect to try an e-cigarette soon.³ This data will be reviewed in May 2014 and it will be important to continue to monitor this usage by young people and adult non-smokers as advertising and marketing communications for these devices increase.

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.

Pharmacy Voice agrees with the proposal to prohibit linking e-cigarettes with illicit drugs.

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

The usage of e-cigarettes in conjunction with alcohol is likely to glamourise 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.

Until more evidence is available on the effects of passive inhalation of e-cigarette vapour, many establishments are choosing to enforce 'vaping policies' which can ban the use of such devices within certain localities. As such, e-cigarette advertisements should not demonstrate the use of e-cigarettes in bars, nightclubs and restaurants as not all of these establishments will allow their use, causing confusion for members of the public. If adverts do show the use of such devices in these kind of establishments, there should be a disclaimer advising members of the public to ask about 'vaping policies' before using their devices indoors in public places.

² ASH (May, 2013) Use of e-cigarettes in Great Britain among adults and young people. Available at: http://www.ash.org.uk/files/documents/ASH_891.pdf

³ *Ibid.*

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

The concept proposed above with regards to ‘vaping policies’ in certain establishments should also apply to establishments in which adults can gamble.

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. Question 15: 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.

Pharmacy Voice agrees with the inclusion and wording of this rule.

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?

Pharmacy Voice believes that no advertisements should depict the usage of an e-cigarette within any kind of healthcare setting such as a hospital or doctor’s surgery. This would be unwise as it would cause members of the public to associate the devices with improving their health; without further research, this is very misleading.

Recent press has reported potential incidences of e-cigarettes igniting and causing severe harm. One example of this is the use of an e-cigarette in a hospital, where the device supposedly ignited a bedside oxygen supply.⁴ Further reports claim that e-cigarettes have caught alight whilst charging.⁵ Until more research is carried out to ensure the safety of these devices, their usage within advertisements should be limited to outdoors; this will also work to mitigate concerns over the normalisation of smoking.

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.

Pharmacy Voice agrees with the inclusion and wording of this rule.

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 inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Pharmacy Voice agrees with the inclusion and wording of this rule.

⁴ <http://www.dailymail.co.uk/news/article-2603975/OAP-engulfed-flames-seriously-burned-e-cigarette-ignites-oxygen-Manchester-hospital.html>

⁵ <http://www.standard.co.uk/news/london/fire-crews-issue-warning-after-woman-hurt-by-ecigarette-explosion-in-east-london-flat-9262038.html>

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.

Pharmacy Voice believes that this 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.

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. 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.

Pharmacy Voice agrees with the inclusion and wording of this rule.

Rule 13: [Amendment to existing BCAP rule]. Question 21: Do you agree with e-cigarettes being included in this list of scheduling restrictions?

Yes.

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.

Pharmacy Voice agrees that all advertisements for e-cigarettes should be centrally cleared in order to avoid harm, ensure appropriate scheduling and deliver a consistent, clear message to the public.

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.

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.

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.

No.

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?

Once licensed as medicines, e-cigarettes will need to adhere to the medicines guidelines and marketing authorisations as laid out by the MHRA and PAGB. Pharmacy Voice strongly urges the MHRA to develop a suitable processes for licensing these devices.

Once licensed, e-cigarettes will be provided under the guidance of an experienced health professional. UK legislation on the age at which they can be sold may need to change in order to allow addicted smokers who are under 18 to use the products for nicotine replacement therapy through a harm reduction strategy under the guidance of their GP or pharmacist.

Question 26: Do you agree with the proposed definition of e-cigarette? If not please explain why.

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).⁶

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.

These rules have not explicitly focussed on online advertising. Between the years 2009 and 2011, searches via the search engine Google using the terms 'electronic cigarette' increased by fifty fold.⁷ There has not been information collated and released regarding what percentage of e-cigarettes are purchased online currently but this figure is likely to increase as advertising through web-pages and social networks increases. 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.

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?

Pharmacy Voice welcomes further rigorous peer-reviewed studies to support the safe and effective use of these devices. Research on toxicant exposure, dual use with tobacco products and youth uptake of these products needs to develop further in order to better inform the public and regulators. 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.

⁶ World Health Organization (WHO) (July, 2013) Tobacco Free Initiative. Available at: http://www.who.int/tobacco/communications/statements/electronic_cigarettes/en/

⁷ Yamin, CK, Bitton, A and Bates, DW (2010) E-Cigarettes: a rapidly growing internet phenomenon. Available at: <http://www.ncbi.nlm.nih.gov/pubmed/21041581>



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RE: Philip Morris Limited Comments on the CAP Consultation on the Marketing of E-Cigarettes

GENERAL COMMENTS

Philip Morris Limited (“PML”) welcomes the opportunity to comment on the Committee of Advertising Practice (“CAP”) Consultation on the Marketing of E-Cigarettes. Presently PML does not have an e-cigarette being sold commercially, however we have announced our intention to enter the category in 2014. It is upon this prospective basis that we submit our response to the CAP’s consultation.

As the CAP acknowledges, there is widespread interest in the potential public health benefit of e-cigarettes as an alternative to tobacco. We agree with many in the public health community that the use of e-cigarettes may represent a reduced risk alternative to combustible cigarettes for adult smokers who may continue using nicotine. However, as these products are not risk-free, reasonable regulations, including restrictions on advertising, should be implemented. For example, while ensuring smokers’ awareness of and access to these products, their exposure to minors should be minimized.

E-cigarettes are a promising reduced risk product because they deliver nicotine with far fewer harmful chemicals than cigarettes. Although nicotine is addictive, scientific organizations and experts agree that the adverse health effects of smoking are not caused by nicotine. As the National Institute for Health and Clinical Excellence noted in its guidance on Harm-Reduction Approaches to Smoking, “It is primarily the toxins and carcinogens in tobacco smoke – not the nicotine – that cause illness and death.”¹ While toxic chemicals may be detected in e-cigarette vapour, they are present in much lower levels than cigarette smoke.²

E-cigarettes, as potentially reduced risk alternatives to combustible cigarettes, are a new, unique product category that should be regulated differently from combustible tobacco, pharmaceuticals and other products such as alcohol. In particular, it is essential that adult smokers have information about e-cigarettes, what they are, how they operate, and why smokers should consider using them instead of cigarettes. At the same time, e-cigarettes should be marketed in a way that minimize exposure to non-smokers and minors.

Although it is beyond the scope of this consultation, we believe that regulation of e-cigarettes and other potentially reduced risk alternatives to combustible cigarettes should:

- Prohibit sale to minors;
- Include quality control standards;

¹ National Institute for Health and Care Excellence (“NICE”), Tobacco: harm-reduction approaches to smoking, NICE public health guidance no. 45, June 2013, p. 6, <http://www.nice.org.uk/nicemedia/live/14178/63996/63996.pdf>.

² Goniewicz et al., Levels of selected carcinogens and toxicants in vapour from electronic cigarettes, Tobacco Control, March 2013, <http://tobaccocontrol.bmj.com/content/early/2013/03/05/tobaccocontrol-2012-050859.abstract>.



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- Ensure that products deliver consistent levels of nicotine and not limit nicotine to levels that are unacceptable to consumers;
- Permit the products to be sold in a range of retail outlets similar to the one selling cigarettes; and
- Include mandatory warnings consistent with the risks of the product.

Advertising and marketing rules and restrictions should:

- Permit communication to adult smokers about the relative risk profile of the products;
- Limit the exposure of advertising to minors and any appeal to non-smokers;
- Clearly state that nicotine is an addictive substance and that these products are not risk-free; and
- Prohibit reduced risk claims or medicinal claims unless substantiated by rigorous scientific evidence and authorized by the respective regulator.³

Our comments to the specific questions posed in the Proposal are below.

SPECIFIC COMMENTS

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

Question 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.

Answer: 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. The advertising of e-cigarettes should be subject to the enforceable restrictions described in the General Comments above and in the responses to the questions below which we believe incorporate the concept of social responsibility.

Question 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?

Answer: See General Comments above.

³ As the CAP Proposal acknowledges, the Tobacco Products Directive, which will take effect in Britain upon transposition into UK law in roughly two years' time, contains specific marketing restrictions on e-cigarettes that may partially supersede the rules that result from this consultation.



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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.

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.

Answer: Yes.

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?

Answer: See General Comments.

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.

Answer: 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.

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.

Answer: See response to Question 5. 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.

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.

Answer: Yes, we agree that products should only be presented as medicines if they are licensed by the MHRA.



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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.

Answer: Yes.

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.

Answer: See General Comments. 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.

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

Question 10: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Answer: 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. 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.

Question 11: 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.

Answer: 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,



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while the use among never-smokers is negligible.⁴ 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:

- *“Among adults electronic cigarette current use has grown among smokers and ex-smokers and remains at 0% among those who have never smoked.”⁵*
- *“[T]here are 1.3 million current users of e-cigarettes in the UK. This number is almost entirely made of current and ex-smokers; with perhaps as many as 400,000 people having replaced smoking with e-cigarette use. There is little evidence to suggest that anything more than a negligible number of non-smokers regularly use the product.”⁶*

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.

Answer: Yes.

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

Answer: Any 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.

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

Answer: See answer to Question 13.

⁴ Ilze Bogdanovica, Linda Bauld, John Britton, What you need to know about electronic cigarettes, 20 March 2014, <http://www.rcplondon.ac.uk/commentary/what-you-need-know-about-electronic-cigarettes>.

⁵ ASH UK, Use of E-cigarettes in Great Britain Among Adults and Young People, May 2013, http://www.ash.org.uk/files/documents/ASH_891.pdf.

⁶ ASH UK, Briefing on e-cigarettes, March 2014, http://ash.org.uk/files/documents/ASH_715.pdf.



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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.

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.

Answer: See answer to Question 13.

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?

Answer: See answer to Question 13.

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.

Answer: Yes.

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.

Answer: Yes.



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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.

Answer: We support this proposed rule.

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.

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.

Answer: Yes.

Rule 13: [Amendment to existing BCAP rule]

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

Answer: In the UK context, we agree with treating e-cigarettes consistently with other activities and products covered by BCAP Rule 32.2, which requires that they not be advertised in or adjacent to programmes commissioned for, principally directed at or likely to appeal particularly to audiences below the age of 18.

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.

Answer: The advertising regime should be similar as for other age-restricted products.



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11.1 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.

Answer: The same rules should apply to all e-cigarettes, including those which do not contain nicotine.

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.

Answer: No.

11.2 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?

Answer: See answer to Questions 5, 6 and 7. In the UK context, medicinal claims which have been substantiated by evidence and authorized by a competent regulatory authority should be subject to specific rules established for communicating about such products.

11.3 Definition of electronic cigarette

Question 26: Do you agree with the proposed definition of e-cigarette? If not please explain why.

Answer: In the context of the issues under consideration, and as the proposed definition is consistent with the Tobacco Products Directive, yes.

11.4 Further comments

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.

Answer: See General Comments above.



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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?

Answer: It is essential that adult smokers have information about electronic cigarettes, what the products are, how they operate, and why smokers should consider using them instead of cigarettes. At the same time, e-cigarettes should be marketed in a way that minimize exposure to non-smokers and minors. While for the most part the rules suggested in this consultation are consistent with those principles, we would advise against establishing inflexible, overbroad rules when not supported by evidence.



Public Health
England

Public Health England response to CAP/BCAP consultation on the marketing of e-cigarettes

About Public Health England

Public Health England's mission is to protect and improve the nation's health and to address inequalities through working with national and local government, the NHS, industry and the voluntary and community sector. PHE is an operationally autonomous executive agency of the Department of Health.

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Introduction and overview of Public Health England's position

Public Health England (PHE) was established in April 2013 as an executive agency of the Department of Health with a mission to protect and improve the nation's health and to address inequalities.

Smoking is the biggest cause of preventable death in England and the single largest contributor to disabled life years. Reducing the number of people smoking is a key priority for PHE. For people who are unwilling or unable to stop, we support the evidence set out by NICE in the tobacco harm reduction guidance (June 2013) and the framework being developed by the MHRA for the regulation of nicotine containing products (NCPs), including electronic cigarettes, enabling manufacturers to apply for a licence allowing products to make medicinal claims relating to smoking cessation and harm reduction. Early evidence from ASHⁱ and the UCL Smoking Toolkit Study (STS)ⁱⁱ suggests that smoking rates in England are declining faster now than before the popularisation of NCPs.

Increasing numbers of people are turning to NCPs as an aid to quitting or cutting down their smoking and significant numbers of ex-smokers are staying smokefree while using NCPs. These products have been described by experts as being of substantially lower risk than smoking.ⁱⁱⁱ Indeed, in the UK sustained NCP use is confined almost entirely to current and ex-smokers. The STS finds that more smokers now use NCPs to assist their quit attempt than use over the counter nicotine replacement therapy. While we continue to recommend the use of existing licensed smoking cessation products, PHE recognises that NCPs present an opportunity for public health gain. Concerns have been expressed that the popularisation of NCPs in England might increase the number of smokers or reduce the frequency or success of their quit attempts, however the STS finds that these concerns are not currently justified by the data. We are keen to see the public health opportunity represented by replacing smoking maximised, while also ensuring that the risks associated with NCPs are managed through appropriate and proportionate regulation. There are risks that excessive restrictions on these products will have a negative public health impact by reducing their capacity to compete with and replace smoking. This is to be avoided.

A significant concern in relation NCPs is the way in which their marketing may shape perceptions and the likelihood of smoking, particularly among young people and non-smokers. In so far as these products may reduce tobacco smoking and their marketing can be geared to emphasise the harms of smoking and the benefits of quitting, there is, at the very least, a marked potential to denormalise tobacco use in the UK. Indeed, several of the campaigns we have seen in the UK can be expected to have that effect. Effective and balanced regulation is essential to ensure that NCP advertising and promotion acts to denormalise, rather than renormalise, smoking by positioning the product clearly as a replacement for smoking.

Advertising of NCPs not licensed as medicines will be prohibited under the new EU Tobacco Products Directive due to come into effect in 2016. Advertising of MHRA-licensed products will be covered by the requirement that it is consistent with the product's rational use – i.e. to quit or reduce the harm from smoking. In this interim period, PHE recommends that this principle is applied to all advertising and promotion of NCPs.

The term “e-cigarette” or “electronic cigarette” is not a useful descriptor and is often misleading. Some products contain nicotine, but not all; some produce vapour, but not all; some look like cigarettes, but not all; not all are electronic and none are cigarettes. There is an opportunity to clarify terminology around these products through the process of advertising regulation and to help reduce public confusion about nicotine and smoking more generally. Surveys suggest that approximately half of adults mistakenly believe that much or all of the harm from smoking comes from nicotine. The impact of any advertising of NCPs and the regulation of that advertising presents an opportunity to reduce public confusion about the risks, however if not handled correctly, both advertising and the regulation of advertising could act to exacerbate that confusion. Paradoxically, insufficient delivery of nicotine may be of greater risk among NCP users as ineffective delivery of nicotine may fail to ease withdrawal and so trigger relapse to smoking.

Answers to questions on proposed rules

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

Question 1: 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.

Question 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?

PHE agrees that advertising and promotion of NCPs should be socially responsible. 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.

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.

Manufacturers should highlight the importance of safe use and storage of NCPs (including all of their component parts such as refill containers and chargers) in a manner proportionate to the risks.

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 from being shown.

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.

Question 4: Do you have any comments or evidence which can help to inform CAP and BCAP's role of preventing the indirect promotion of tobacco products while still permitting e-cigarettes to be advertised?

PHE agrees with the principle of this rule, but recommends the addition of information regarding the prohibition of any design, colour, imagery, logos or styles that may result in an association with any existing tobacco product, or be related to any form of smoking-type behaviour. Some NCPs are or will be produced and promoted by tobacco manufacturers and it is therefore important that these are not used in a way that covertly promotes other (smoked) products.

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.

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.

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.

PHE agrees with the proposals to prohibit the making of health and medicinal claims for products not licensed by the MHRA. However, advertising which seeks to associate the replacement of smoking with a healthier lifestyle or better life should not be discouraged. To ensure that all advertising and promotion of NCPs is directed at existing tobacco users, PHE recommends strengthening the wording of this rule to make it clear that these products “*should*” (rather than “*may*”) be presented as an alternative to tobacco.

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 have for improvement.

As noted earlier in this response, PHE believes the term “e-cigarette” has created misconceptions around what these products are – they are not cigarettes and do not produce tobacco smoke. Requiring the use of clearer terminology may assist in dispelling some of the misconceptions associated with these products. Consideration could be given to more accurate terminology such as “vapouriser” which would be more suitable and informative. Furthermore, advertising should not describe these products as being “smoked” or use other descriptions that could be confused with smoking.

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 have for improvement.

PHE agrees with the inclusion and wording of this rule. The public health implications of insufficient nicotine delivery should not be ignored. Smokers may find their attempts to stop or reduce smoking undermined by products which fail to reduce nicotine withdrawal adequately. Therefore we believe 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.

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

Question 10: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Question 11: 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.

PHE agrees with this rule and that a further strengthening to require all marketing to be explicitly addressed to existing nicotine users only would be appropriate. 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.

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.

PHE agrees with this rule and the need to ensure that NCPs are not associated in any way with gambling, alcohol or illicit drugs.

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.

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.

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?

PHE agrees with this rule and to the inclusion of driving as an unsuitable activity for the depiction of eNCP use.

Rule 9: Marketing communications / advertisements must not be likely to appeal particularly to young 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.

PHE agrees with this rule.

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 inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

PHE agrees with this rule. As the sale of NCPs is to be restricted to those aged 18 years and over, PHE's view is that all advertisements should only feature NCP use by adults. However, 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.

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 you consider may assist CAP and BCAP's consideration of this rule.

As the sale of NCPs is to be restricted to over-18s, highlighting this on all advertisements would seem appropriate, in a manner consistent with other age-restricted products.

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.

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.

PHE agrees with this rule.

Rule 13: [Amendment to existing BCAP rule: addition of e-cigarettes to the list of products and services set out in rule 32.2, to prevent e-cigarettes from being "advertised

in or adjacent to programmes commissioned for, principally .directed at or likely to appeal particularly to audiences below the age of 18”.

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

PHE agrees with this rule.

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.

As this is a rapidly evolving field – and potentially involves the tobacco industry, which may have motives other than to increase awareness of products relating to electronic cigarettes or other ‘alternatives’ to smoking – PHE takes the view that all advertising for NCPs should, ideally, be centrally cleared through the CAP process, including radio, television and print. However we understand that it may not be possible to make this mandatory.

Answers to additional questions

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.

PHE takes the view that, in order to avoid any potential confusion, the same rules and restrictions should apply to all NCPs, whether or not they contain nicotine. However, for the reasons given above, advertisements for non-nicotine products should highlight that a particular variety does not contain any nicotine.

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?

PHE takes the view that, with the exception of Rule 3 covering health and medicinal claims, the same rules should apply to the advertising of both licensed and non-licensed NCPs.

Question 26: Do you agree with the proposed definition of e-cigarettes? If not please explain why.

PHE agrees with the definition proposed and the importance of being consistent with the wording used in the EU Tobacco Products Directive

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.

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?

PHE takes the view that it will be important to keep the rules applying to advertising and promotion of NCPs under regular review, to ensure that there are no unintended consequences and that any new or emerging issues within this rapidly developing field are appropriately addressed.

ⁱ www.ash.org.uk

ⁱⁱ www.smokinginengland.info

ⁱⁱⁱ Estimating the Harms of Nicotine-Containing Products Using the MCDA Approach Nutt D.J. Phillips L.D. Balfour D. et al. *Eur Addict Res* 2014;20:218-225 (DOI:10.1159/000360220)

Date: 28th April 2014



E-cigarettes Consultation
Regulatory Policy Team
Mid City Place
71 High Holborn
London
WC1V 6QT

Dear madam/sir

CAP consultation on electronic cigarette advertising

I am writing to you as a representative of Public Health Suffolk and would like to thank you for the opportunity to respond to the consultation on the marketing of electronic cigarettes. Since the Tobacco Advertising and Promotion 2002 we have seen a significant reduction in the prevalence of smoking. The evidence proves that promotion of tobacco products has been an important driver for young people starting smoking¹. However in recent years we are witnessing an increase in glamorised imagery of electronic cigarettes and misleading adverts that, we feel, promotes tobacco products and, if left unregulated, could apply to children and non-smokers.

Please see below the response to your rules and 28 questions:

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

Question 1: 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?

Question 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?

Agree. Electronic cigarette companies need to be socially responsible. The addictive nature of nicotine should not be underestimated. However, "socially responsible" is an ambiguous statement. The regulations will need to be specific around how the use of wording in publications or radio or how imagery in print or television does not appeal to children as nicotine is an addictive product. We have seen the usage of "safe" alternative on marketing material. Being an unregulated product can it be advertised and guaranteed as "safe"?

Warnings on safe storage of this toxic product also need to be included.

¹ Moodie, C. & Ford, A. (2011). Young adult smokers' perceptions of cigarette pack innovation, pack colour and plain packaging. *Australasian Marketing Journal*, 19, 174-180.

We 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**.

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 from being shown.

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.

Question 4: Do you have any comments or evidence which can help to inform CAP and BCAP’s role of preventing the indirect promotion of tobacco products while still permitting electronic cigarettes to be advertised?

We agree with the inclusion of rule 2. 91% of smokers state they are aware of the availability of electronic cigarettes². 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 also needs to be a restriction on covert advertising of other tobacco products, such as “NJoy” promoting how closely their product resembles a real cigarette.

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.

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.

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.

We agree with Rule 3. 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.

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 have for improvement.

Yes we agree with this statement but transfer e-cigarette to electronic cigarette.

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.

² Use of e-cigarettes in Great Britain. ASH. London. April 2014.

Question 9: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

Yes we agree with this statement. It should also state that nicotine is an addictive substance.

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

Question 10: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

Question 11: 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.

We agree with this statement and feel it is proportionate.

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.

Yes we agree with this statement.

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.

Question 15: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

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?

Yes we agree with this statement.

Rule 9: Marketing communications / advertisements must not be likely to appeal particularly to young 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 have for improvement.

We agree with this statement. Again we request that e- cigarettes are substituted for electronic cigarettes.

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 inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

We do not agree with this rule. The highest prevalence of smokers is in the under 25 category with 25% being smokers³. 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.

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 that products are not suitable for under-18s? Please provide any evidence which you consider may assist CAP and BCAP's consideration of this rule.

Splashing large markings that a product is not for under 18s is not well evidenced in reducing uptake in children. "Explicit Lyrics: Parental Advisory Warnings" on music albums, has made some albums more desirable, resulting in the reverse effect to what was intended. Highlighting that products should not be used for under 18s has an unintended adverse effect which the tobacco industry has exploited in the past with sponsoring youth prevention programs⁴. It is better that the adverts don't appeal to under 18s rather than being explicit in stating children cannot use them.

Small print could state that "not for under 18s" to provide support and guidance to parents/carers.

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.

Question 20: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

Agree with this statement but "or location" (i.e. Youth magazines, billboards near schools) needs to be added after "context".

³ [Opinions and Lifestyle Survey, Smoking habits amongst adults, 2012](#). ONS, Sept. 2013

⁴ American Legacy Foundation, [Getting to the Truth: Assessing Youths' Reactions to the truthsm and 'Think. Don't Smoke' Tobacco Countermarketing Campaigns](#), First Look Report 9, June 2002

Rule 13: [Amendment to existing BCAP rules to include e-cigarettes in the list of products and services in existing rule 32.2, to prevent e-cigarettes from being “advertised in or adjacent to programmes directed at or likely to appeal particularly to audiences below the age of 18”]

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

We agree with this statement.

Rule 14: 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?

We agree with this statement.

Additional Questions

Question 23: To what extent, if any, do you consider that new rules should apply to e-cigarettes that do not contain nicotine?

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?

Electronic cigarettes that do not contain nicotine are confusing and misleading and therefore need to be subject to the same regulations as nicotine containing products.

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?

Electronic-cigarettes that are licensed as medicines need to follow CAP and MHRA rules as other medical products. Their unique selling point will be the safety regulation and reassures this brings to the consumer.

Question 26: Do you agree with the proposed definition of e-cigarette? If not, please explain why.

We agree with the definition if the e-cigarette is changed to electronic cigarette and includes products that don’t include nicotine.

Question 27: Are there any other rules which you believe CAP and BCAP should consider implementing in relation to the advertising of e-cigarettes?

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?

There is a concern that social media has not been addressed in the consultation. This is an increasing method of promotion and requires the same level of regulation as other mediums.

All advertising should focus on current smokers and not on non-smokers and children.

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.

Again thank you for the opportunity to contribute to the consultation,

Yours faithfully

Health Improvement Manager
Public Health Suffolk