

Consultation on the marketing of e-cigarettes

CAP and BACP proposals for new rules

Response from:

Manchester NHS Stop Smoking Service, Health and Wellbeing Service, Victoria Mill, Lower Vickers Street, Miles Platting, Manchester M40 7LJ

The questions are answered within the context of the consultation although it should be noted that we have grave concerns regarding the advertising of an addictive drug to the public, and, furthermore, by a delivery system which we cannot yet be sure is safe.

Q1: We agree with the wording of the rule that marketing communications /advertisements for e-cigarettes must be socially responsible.

Q2: -

Q3: We do not consider restricting visuals of e-cigarettes to be disproportionate in relation to the indirect marketing of cigarettes.

Q4: Use of e-cigarettes will be shown in 'a positive light'. The manufacturers (some of whom are owned by tobacco companies) want to sell their products. 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. Lily Allen released a video containing one brief shot of an e-cigarette logo followed by lengthy images of glamorous young women using e-cigarettes – or visually 'smoking'.

Q5: We agree with the proposal to limit health claims.

Q6: We agree with the proposed definition of health claims.

Q7: We agree with the proposal to limit medicinal claims.

Q8: We agree with the principle of this rule but there are issues with an e-cigarette logo being screened in one part of an advertisement and action indistinguishable from smoking in another or with an e-cigarette logo being flashed up in an advertisement that was aired showing a man going out to smoke and missing his baby's first dancing steps, which gave the message that you miss out by going outside to smoke; use an e-cigarette or smoke inside? This type of advertising undermines the successful recent smokefree messages that have reduced asthma admissions and preterm births by 10%.

Q9: We agree that marketing communications / advertisements must state clearly if the product contains nicotine [or if it does not].

Q 10 & 11: No, we do not agree with the wording of this rule. Marketing communications / advertisements must explicitly target only those who smoke tobacco or use e-cigarettes already. There is no reason to advertise e-cigarettes which contain an addictive drug and may be harmful for the public as a whole.

Q12: Yes, we agree that marketing communications / advertisements must not link e-cigarettes with gambling, alcohol or illicit drugs.

Q13: Yes, we agree that alcohol should be included.

Q14: Yes, we agree that gambling should be included.

Q15: Yes, we agree that marketing communications / advertisements must not link e-cigarettes with activities or locations in which using them would be unwise, such as driving.

Q16: We consider that the depiction of e-cigarette use in the presence of children under 18 is harmful. It has the potential to undermine the successful smokefree messages which are improving child health and to renormalize smoking behaviours in the presence of children. We consider that the use of an addictive drug in the presence of children should not be depicted in advertising.

Q17: We agree that marketing communications / advertisements must not be likely to appeal particularly – **or indeed at all** – to people under 18.

Q18: We consider that there should be no people under the age of 25 at all in e-cigarette promotion. It is not appropriate to depict the use of an addictive drug in the presence of children or young people. We consider that e-cigarette advertising should not be shown before 9pm.

Q19: Yes, we consider it necessary that ads state products are not suitable for under-18s.

Q20: Yes, we agree that marketing communications must not be directed at people under 18, and in addition, consider that ads should not be shown before 9pm.

Q21: Yes, we agree that e-cigarettes should be included in the list of scheduling restrictions.

Q22: Yes, we agree that all radio ads for e-cigarettes must be centrally cleared.

Qs23 & 24: The rules for e-cigarettes containing / not containing nicotine should be exactly the same as the products are visually indistinguishable.

Q25: The rules for e-cigarettes licensed in the future as medicines should be the same – except in relation to health / medicinal claims as proven.

Q26: Yes, we agree with the proposed definition of an e-cigarette.

Q27: we would like CAP and BCAP to consider restriction of advertising to after 9pm to safeguard children.

Q28: The questions are answered within the context of the consultation although it should be noted that we have grave concerns regarding the advertising of an addictive drug to the public, and furthermore, by a delivery system which we cannot yet be sure is safe.

We are concerned about the potential for e-cigarette advertising to renormalize smoking behaviour and to bring it back into people's homes.

We are concerned that this is tobacco advertising by the back door.

We are concerned about growing evidence that e-cigarettes are increasingly being used by young people who have never smoked a cigarette, leading them into nicotine addiction.

Additional evidence/ comment:

<http://www.scirp.org/journal/PaperInformation.aspx?PaperID=28003>

E-Cigarette: A New Tobacco Product for Schoolchildren in Paris

Author(s)

[Bertrand Dautzenberg](#), [Pierre Birkui](#), [Maryvonne Noël](#), [Johanna Dorsett](#), [Monique Osman](#), [Marie-Dominique Dautzenberg](#)

ABSTRACT

Objectives: To explore if the dramatic decrease in price of e-cigarette has transformed this new product into a product used for tobacco initiation among a teenage population. **Methods:** The authors added a question in 2012 on e-cigarette in the yearly survey on tobacco consumption in Paris schoolchildren. The study is conducted on a randomly selected sample from 2% of classes since 1991. **Results:** 277 (8.1%) of the 3409 schoolchildren studied (including 575 non responders to this question) reported having had an experience with e-cigarette. Experimentation rate is 6.4% among the 12 - 14-year-old, 11.8% among the 15 - 16-year-old and 9% among the 17-year-old schoolchildren. Among the 12 - 14- year-old schoolchildren, 64.4% of e-cigarette experimentation was by non-smokers. Of the 17-year-old teenagers who had used e-cigarettes, 12.4% were non-smokers. For the whole population, 33.2% of those having tried e-cigarette are non-smoker, 22.7% occasional smoker, 3.6% ex-smoker and 40.4% daily smoker. Those who experiment cannabis, shisha or binge-drinking are more frequently users of e-cigarette. In the smoker group, there is an inverse trend of relationship between the readiness to quit tobacco and the rate of use of e-cigarette. **Conclusion:** For teenager's, e-cigarettes have become not a product to aid quit tobacco but a product for experimentation and initiation of cigarette use. Regulation is urgently needed to control the emergent use of this new tobacco product by children.

Manchester Stop Smoking Service

Anecdotally, we have more and more participants on our level 2 smoking cessation advisor training reporting that while their children are not interested in smoking cigarettes, they are asking their parents to buy them 'shisha pens' and other e-cigarette products, which are collected, kept in pencil cases and used.

E-cigarettes are heavily promoted now in TV programmes and pop videos (e.g. Lily Allen, Dates...) aimed at young people.

<http://www.sciencedaily.com/releases/2014/03/140327222229.htm>

10% fall in asthma and preterm births: the Lancet

Thank you for inviting the MHRA to comment on proposals for amending the CAP and BCAP Codes as they relate to the advertising of electronic cigarette products.

The MHRA has a statutory responsibility to regulate the advertising of medicinal products in accordance with the requirements of part 14 of the Human Medicines Regulations 2012 (HMRs). We welcome the opportunity to comment on the aspects of your proposed new rules for the advertising of electronic cigarettes that fall within this remit. We have considered the proposals and have the following comments:

Question 7 - We agree with your proposal in rule 3 to restrict medicinal claims to those products that have been authorised as a medicine or medical device. We 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.

Question 25 – This asks to what extent the rules for e-cigarettes should apply to those which are licensed as medicines. We consider that all the proposed rules should apply with the exception of rule 11 which explicitly restrict 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.

If any further concerns relating to the advertising of medicinal products arise during your evaluation of the responses, we would be happy to discuss if helpful.

We are pleased to work together with CAP, ASA and other regulators of medicines advertising to ensure that consistent standards are applied to advertisers in this area.

Thank you for giving us the opportunity to review your proposed changes.

Advertising Standards Unit

MHRA

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mhra.gov.uk

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MHRA is a centre of the Medicines and Healthcare Products Regulatory Agency

CAP/BCAP Consultation on the marketing of e-cigarettes

24 April 2014

Group submission from:

The New Nicotine Alliance (UK).

Group background:

The New Nicotine Alliance (NNAUK) are a not-for-profit organisation, concerned with enhancing and improving public health through a greater understanding of the use of “New” (i.e. risk-reduced) nicotine products and technologies. Several members of our Trustee Board are experienced “vapers” (users of ecigarettes) and we consult widely with ecigarette consumer forums and advocacy groups throughout the UK and EU. NNAUK is funded by private donations and does not accept donations from the electronic cigarette or tobacco industries. Further information about NNAUK can be found on our website (<http://www.nnalliance.org/>).

General comments:

The NNAUK welcomes this consultation and is broadly supportive of its intentions and content, save for some specific concerns (see below). We firmly believe there are significant public health benefits to be gained from encouraging smokers to switch to less harmful alternatives, like ecigarettes. Clearly, for these benefits to be fully realised, smokers need to be aware of what products are available and commercial advertising will play a part in informing them.

Comments on specific questions

	Question	Response
Rule 1: Marketing communications / advertisements for e-cigarettes must be socially responsible.		
Q1	Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.	We agree with the intention here, but the term “socially responsible” is subjective and open to interpretation. There are some that would regard any nicotine use to be socially irresponsible, regardless of whether it actually causes harm or not. It would be unfortunate if the terminology used here was such that any advertisement could be challenged on social responsibility grounds. Encouraging smokers to switch to ecigarettes is socially responsible, so the code needs to protect advertisers from challenge on purely ideological grounds. Our suggestion would be that the rule should be amended to say that advertisements should not be “socially irresponsible”.
Q2	What specific advertising approaches, if any, that are not covered by the following rules do you consider might be identified as problematic within the	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

	wording of the rule?	difficult and b) not pleasant in any way.
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.		
Q3	Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.	We agree with the sentiment (that ecigarette advertising should not encourage/promote smoking), but the wording is problematic. The Tobacco Products Directive classes ecigarettes as tobacco products and there are signs that the WHO will include all nicotine products under the FCTC. The use of products that are significantly less harmful than “combustible tobacco”, <u>by smokers</u> , should be encouraged (regardless of whether they are tobacco-based, or deemed to be tobacco-based, or not).
Q4	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?	A clear distinction needs to be made between combustible (smoked) tobacco products and harm-reduced alternatives, such as ecigarettes. The criteria for determining whether a product/technology should be deemed “acceptable”, in this context, should be clearly aligned to the risk profile of the product in question. 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.
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.		
Q5	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.	There is no doubt that ecigarettes are clearly less harmful than smoking, by an order of magnitude. This is no more a “health or medicinal claim” than saying that diet Coke has less calories than normal Coke. Advertisers have to be able to tell consumers that their products are less dangerous than smoked tobacco and to allay fears regarding the risk to third-parties (though “passive” exposure to vapour). These are fundamental characteristics of ecigarettes and consumers have a right to know.
Q6	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.	No, for the reason given above. Ecigarettes are not medicines. They do not cure any ailment or enhance performance. They are simply a less-damaging alternative to smoking.
Q7	Do you agree with the proposal to prohibit medicinal claims? If not, please explain why and provide any suggestions you may have for improvement.	In principle, yes.
Rule 4: Marketing communications/advertisements must make clear that the product is an e-cigarette.		
Q8	Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.	This seems somewhat unnecessary, given that the advertisements should be marketing to adult smokers only (see below).
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.		
Q9	Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.	Agreed.

Rule 6: Marketing communications/advertisements must not encourage non-smokers or non-nicotine-users to use e-cigarettes.		
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.	In the interests of public health generally, we would wish to see ecigarettes 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 ecigarettes are small, compared to smoking combustible tobacco. This should be reflected in the extent to which "broad-based appeal" is permissible under these rules.
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.	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.
Rule 7: Marketing communications / advertisements must not link e-cigarettes with gambling, alcohol or illicit drugs.		
Q12	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.	Agreed.
Q13	Do you consider that alcohol should be included in this rule? Please explain why and provide any evidence you consider relevant.	This may be problematic. The ability to use ecigarettes in some licensed premises is a factor for some smokers. It would seem counter-productive to discourage advertisers from acknowledging this fact.
Q14	Do you consider that gambling should be included in this rule? Please explain why and provide any evidence you consider relevant.	Agreed, but there should be no restriction on showing products being used at sporting events (where gambling may take place).
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.		
Q15	Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.	We do not agree that it is inherently unsafe to use an ecigarette whilst driving. It is not against the law to smoke whilst driving, and ecigarettes 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.
Q16	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?	No.
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.		
Q17	Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.	Agreed.
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.		
Q18	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.	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 ecigarettes.
Rule 11: Marketing communications / advertisements must state that products are not suitable for under-18s.		
Q19	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.	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?
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.		
Q20	Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.	Agreed, subject to the above.
Rule 13: [Amendment to existing BCAP Rule 32.2(.7)]: 32.2 These may not be advertised in or adjacent to programmes commissioned for.. below the age of 18: electronic cigarettes		
Q21	Do you agree with e-cigarettes being included in this list of scheduling restrictions?	Agreed
Rule 14: Radio Central Copy Clearance – Radio broadcasters must ensure advertisements for e-cigarettes are centrally cleared.		
Q22	Given BCAP's policy consideration, do you agree that all advertisements for e-cigarettes must be centrally cleared? If you disagree, please explain why.	Agreed
Additional Questions		
Q23	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.	We believe that these rules, subject to our comments above, should apply to all ecigarettes, regardless of nicotine content.
Q24	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.
Q25	To what extent, if any, do you consider that the above rules for e-cigarettes should apply to those which are licensed as medicines?	Medicinal ecigarette products should be subject to the same advertising restrictions as recreational consumer ecigarettes AND the existing rules on medicines advertising.
Q26	Do you agree with the proposed definition of e-cigarette? If not please explain why.	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'.
Q27	Are there any other rules which you believe CAP and BCAP should	None.

	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.	
Q28	Are there any other comments you wish to make in relation to the advertising of e-cigarettes and BCAP's consideration of this issue?	None.

Response to CAP/ BCAP consultation on marketing of electronic cigarettes. 28/4/2014

Tobacco Control Coordinator
Public Health Directorate
NHS Grampian
Eday Road
Aberdeen.

Q1: The wording of Rule 1 is vague and should specify the intended impact of socially responsible elements of the advertising. Suggested wording might be :

Marketing, communication and advertisements for electronic cigarettes should show social responsibility by:

- highlighting the risks of addiction to nicotine
- advertising only post-watershed.

Q2: Advertising should only be done in ways that proactively avoid influencing people to use nicotine unless they are already smoking.

Q3: Rule 2 should be included but the wording should say that it is intended to prevent cigarette-like products being shown.

Q4: Recent evidence shows that there has been a sharp increase in reported cases of nicotine poisoning that correlates with the increased use of e-cigarette use:

<http://www.theguardian.com/society/2014/apr/14/e-cigarette-poisoning-figures-soar-adults-children>. Advertising should highlight the risk of poisoning.

Q5: Health claims for e-cigarettes should be prohibited. The evidence to support such a claim is not strong enough: <http://www.ashscotland.org.uk/what-we-do/supply-information-about-tobacco-and-health/briefings/ecigarettes.aspx>.

Q6: 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.

Q7: It is right to prohibit medicinal claims for electronic cigarettes. The evidence is not strong enough to support such claims: <http://www.ashscotland.org.uk/what-we-do/supply-information-about-tobacco-and-health/briefings/ecigarettes.aspx>. If MHRA regulation takes place then rules governing the advertising of medications should apply.

Q8: Marketing and advertising should make clear what the product is, so need not be limited to making clear that it is an e-cigarette. It should also highlight the risks of poisoning and addiction.

Q9: The rule should be included but the wording should be changed slightly to say that advertising must include factual information on other ingredients. This might include mention of those harmful ingredients already identified in studies : <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3859972/>.

Q10: This rule should be included. The advertising must not encourage new recruits to nicotine addiction.

Q11: The products should be expressly marketed at existing smokers but should recommend using medically regulated products as a best option.

Q12: Yes, but the advertising should not link e-cigarette use with alcohol, gambling or illicit drugs in any way that increases the uptake of any of these substances. However, since all of these are addictive adverts should highlight the harms arising from using them together.

Q13: Adverts positively linking e-cigarette use and alcohol use should not be permitted. Both are addictive and alcohol is known to reduce self-regulation.

Q14: Yes, gambling is a harmfully addictive activity and advertising should not make it more likely that it will be done in the context of other addictive behaviours.

Q15: Yes, that supports the message from proposed legislation in Scotland.

Q16: Yes, it should not be shown in a context including children and young people or which includes role models they may follow.

Q17: Fully agree with Rule 9 as shown

Q18: Agree with Rule 10 as shown

Q19: Rule 11 is necessary and should include the wording, "not suitable for people under 18 or other non-smokers"

Q20: Yes, Rule 12 should be included.

Q21: Yes, E-cigarettes should be included in this list of restrictions

Q22: Yes, all advertising should be centrally cleared.

Q23: It would be impracticable to have a second set of rules that apply to products which do not include nicotine. In any case some studies infer harm from other components of the product. The same rules should apply to all e-cigarettes.

Q24: It would be impracticable to have a second set of rules that apply to products which do not include nicotine. In any case some studies infer harm from other components of the product. The same rules should apply to all e-cigarettes.

Q25: If a product is medically regulated then rules for advertising medicines should apply.

Q26: Yes, that seems like an adequate definition.

Q27: Rules governing tobacco products should apply to e-cigarettes. Since they have the marked capacity to create nicotine addiction, and therefore a vulnerability to tobacco smoking, the rules in Section 21 of the CAP code and Section 10 of the BCAP code should apply.

Q28: All such 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.

E-cigarettes Consultation Response

NHS Lanarkshire

1. Yes we agree that the advertisements must be socially responsible and must not promote e-cigarettes to children, young people under 18 years of age and disadvantaged vulnerable groups. There is a general public perception that e-cigs are better for you than cigarettes. Whilst they may turn out to be the case in due course, the evidence for this is lacking at present.
2. We have concerns that e-cigarettes mimic or simulate smoking behaviours, indeed the very inclusion of “cigarette” in the name of the product may be a trigger for people who are ex or current smokers. Adverts should therefore not be allowed to show people “vaping” with the resultant vapour being shown emitting from this product as this might be an association appeal to ex-smokers or even to never smokers. E-cigarettes use should not normalise smoking.
3. Same as 2.
4. A warning should be added to adverts stating: E-cigarettes should carry a warning that states this 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.
5. 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.
6. We currently do not know the health consequences of e-cigarettes therefore they should be used with caution amongst smokers.
7. Yes prohibit medical claims. E-cigarette companies should also state what the actual purpose of the product is.
8. Yes, make clear the product is an electronic vaping device however we strongly advocate that all references to the word “cigarette” are removed.
9. 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.
10. Yes agree
11. Yes agree. If companies are sincere in their advertising of these products as an alternative to smoking cigarettes, which may be less harmful than smoking, then they should have no need to target never smokers or indeed ex-smokers. The rules should therefore be tighter to ensure that all marketing should be explicitly expressed to smokers only. Young people in particular are very susceptible to “sexy” advertising and these products are promoted to apply to the senses. They are often flavoured and brightly coloured to make them appealing. Those attributes might make non-smokers curious about the product and potentially they could try e-cigarettes as a result and thereafter they might start smoking.

12. Yes, agree. The use of illicit drugs & therefore a “banned” substance may have some appeal to younger people or indeed some vulnerable groups such as those with mental health issues therefore it is imperative that e-cigarette use should in no way be linked to illicit drugs.
13. Yes, agree. The use of alcohol is an adult pursuit therefore linking the use of e-cigarettes could add to their appeal for young people and must be avoided. It is also noted that adverts currently shown on television glamorise alcohol use by increasing a person’s confidence and popularity (especially with members of the opposite sex) and linking their use with e-cigarettes may add to their appeal for children and young people.
14. Yes, agree. Gambling is an adult pursuit therefore linking the use of e-cigarettes could add to their appeal for young people and must be avoided at all costs. It is also noted that adverts currently shown on television glamorise gambling by seemingly increasing a person’s confidence and your popularity (especially with members of the opposite sex) and linking their use with e-cigarettes may add to their appeal for children and young people.
15. Yes, agree.
16. 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.
17. 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.
18. Yes, agree.
19. We believe that for the purposes of clarity, for example for shop keepers, the product information should state an 18+ message.
20. 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.
21. Yes agree.
22. Yes agree.
23. No, to avoid confusion and to be consistent, all e-cigarettes, (regardless whether they contain nicotine or not), should be subject to the same rules and regulations. It could be questioned as to what the actual purpose of non nicotine containing devices is? We could not think of any other product that would promote the use of a device containing no active ingredient that causes the inhalation of substances into your lungs!
24. No, please see 23.
25. Same rules should apply to e-cigarettes.
26. No, the definition of e-cigarettes containing nicotine should state: “This product contains nicotine which can be addictive and should not be used by people who don’t smoke or by women who are pregnant”.
27. No.
28. E-cigarettes are growing in terms of use. From a health standpoint more research is needed! We also need to establish how and why people are using them i.e. for temporary abstinence in situations where smoking is prohibited? Also more research needs to be conducted regarding the effects on these products on oral and dental health.

RESPONSE TO CAP & BCAP - CONSULTATION ON THE MARKETING OF E-CIGARETTES

GENERAL COMMENTS

- We fully support CAP and BCAP’s consultation on e-cigarette advertising and thank the Committees for the opportunity to participate.
- We believe that e-cigarettes need to be regulated appropriately. At the heart of this, we believe it is of fundamental importance to ensure there are appropriate high quality and safety standards for these products. So far as the UK is concerned, this element has been addressed by the e-cigarette provisions of the recently passed EU Tobacco Products Directive.
- Having such product standards in place underpins our belief that the category should enjoy appropriate marketing freedoms, wide retail availability and flexibility for the rapid introduction of product innovations, because of the potential of the category to play a significant role in tobacco harm reduction.
- Because of the nature of the product, we believe that e-cigarettes should only be marketed responsibly. In our view this means:
 - marketing communications should only be directed at adults, both in terms of the content of such communications and by virtue of media placement;
 - marketing communications should only be directed at existing smokers or existing users of other nicotine products; and
 - nothing in marketing communications should be aimed at promoting the use of tobacco products.
- The above serve as Nicoventures’ guiding principles and we adhere to them in respect of all our advertising.
- We welcome CAP and BCAP’s desire to provide a clear framework for the responsible advertising of e-cigarettes and are broadly supportive of the approach that is proposed.
- Comments on CAP and BCAP’s specific questions are set out below.
- Should you be interested, we attach a document ‘*E-cigarettes – a potential breakthrough in harm reduction?*’ that provides further information on e-cigarettes, including an explanation of the role e-cigarettes play in tobacco harm reduction. It also addresses some of the category concerns.
- We are happy to provide further clarity on any points raised in this document or respond to any other queries you may have.

RESPONSES TO SPECIFIC QUESTIONS

	Question	Nicoventures’ Response
	Rule 1: Marketing communications / advertisements for e-cigarettes must be socially responsible.	
Q1	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>We fully support the intent of this rule but believe it would benefit from clarification that compliance with the proposed set of rules amounts to what is considered socially responsible. Without such a clarification our concern is that unnecessary uncertainty is introduced around what specific approaches would be considered problematic.</p> <p>We therefore suggest the rule reads as follows: <i>“Marketing communications / advertisements for e-cigarettes must be socially responsible, meaning that they must comply with the rules in this Section X.”</i></p>
Q2	What specific advertising	We do not consider there are any specific approaches,

	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?	not covered elsewhere, that need to be identified in this rule. Indeed, as highlighted in the consultation document, we believe it would be difficult to define any specific approaches in a meaningful way.
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.		
Q3	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>Yes, we agree with the inclusion of this rule and support the notion that e-cigarettes should not be a category used to promote tobacco products.</p> <p>We fully endorse the comment in the consultation document that the new rules should not unreasonably restrict the showing of e-cigarettes and we therefore believe it is critical that the second sentence of the proposed rule is retained (and widened to clarify that showing the product in use is also permitted). As the category is new, advertisers need to be able to communicate appropriately about the nature of the products. We also agree with the comment in the consultation document that the similarity of e-cigarettes to tobacco products is an important appeal to many seeking a tobacco alternative and advertisers need to be able to convey this similarity by showing the product.</p> <p>We would also appreciate guidance/clarity that, consistent with proposed Rule 3, this 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” (we note the difficulty we have had with this under the current BCAP Code).</p> <p>We therefore suggest that the second sentence of this proposed rule be amended to: <i>“This rule is not intended to prevent cigarette-like products being shown (whether or not in use), the giving of factual information about the product or the presentation of e-cigarettes as a product for smokers / an alternative to tobacco.”</i></p>
Q4	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>We believe that proposed Rule 2, when taken with the other proposed rules, achieves CAP and BCAP’s goal.</p> <p>We absolutely agree that e-cigarette advertising should not be used to indirectly promote tobacco products. However, we do not believe that this would be an issue – from what we know about e-cigarette users, the clear primary motivator in using e-cigarettes is a desire to switch from tobacco. Therefore, the advertising of e-cigarettes should actually lead to more smokers switching (so, rather than promoting tobacco products, the advertising of e-cigarettes should help reduce the number of smokers and tobacco consumption).</p> <p>We note that, where e-cigarettes are treated as a separate category from tobacco cigarettes (as in the UK), consideration could be given to an express prohibition 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>
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.		
Q5	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.	<p>On the basis of the proposed definition we do not agree with the proposal to prohibit health claims.</p> <p>Instead, we believe this rule should read: <i>“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.”</i></p> <p>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).</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>
Q6	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.	No, as highlighted in our response to Q5, we consider it disproportionately and unnecessarily restrictive. Please see our comments in response to Q5 which includes our proposal for the wording of Rule 3.
Q7	Do you agree with the proposal to prohibit medicinal claims? If not, please explain why and provide any suggestions you may have for improvement.	Yes, we agree with this proposal. If the rules are to apply to e-cigarettes which are licensed by the MHRA, it is important that the text in square brackets is included i.e. medicinal claims should be permitted in relation to licensed products.
Rule 4: Marketing communications / advertisements must make clear that the product is an e-cigarette.		
Q8	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>Yes, we agree with the inclusion and wording of this rule.</p> <p>As highlighted in the consultation document, because of the novel nature of the product, ads for e-cigarettes should make clear what is being advertised. We also agree with the statement in the consultation document that it assists in answering concerns about the indirect promotion of tobacco use by providing clarity about what is being advertised.</p>
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.		
Q9	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>Yes, we agree with the inclusion of this rule and believe the words in square brackets should be retained i.e. advertisements should also clearly state if the product does <i>not</i> contain nicotine.</p> <p>We endorse the ASA adjudications that have stated that whether or not an e-cigarette contained nicotine was material information which a consumer would need and note that research shows that certain consumers move from higher to lower nicotine strengths and then to no nicotine at all.</p> <p>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: <i>“They may also include factual information about the product and its characteristics.”</i></p>
Rule 6: Marketing communications / advertisements must not encourage non-smokers or non-nicotine-users to use e-cigarettes.		
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>We agree with the sentiment of the proposed rule although believe the reference to “encourage” is problematic on account of being too broad - it is impossible to prevent an advertisement having some effect outside of its intended audience.</p> <p>If CAP / BCAP decided to follow this approach we suggest the rule should read: <i>“Marketing communications / advertisement must not deliberately target non-smokers or non-nicotine-users.”</i> (option 1)</p> <p>However, as we believe that, in order to be socially responsible, advisements must not promote e-cigarettes to non-smokers or non-nicotine-users we would also support the notion of requiring all advertising to explicitly address existing smokers and / or existing nicotine users.</p> <p>If CAP / BCAP decided to follow this approach the rule could read: <i>“Marketing communications / advertisements must be addressed to existing smokers and / or existing nicotine users or otherwise convey that the product is intended for use by existing smokers and / or existing nicotine users.”</i> (option 2)</p> <p>If option 2 was followed we do not think that, in order to achieve the purpose of the rule, option 1 would also be required.</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.	Please see our response to Q10.
Rule 7: Marketing communications / advertisements must not link e-cigarettes with gambling, alcohol		

or illicit drugs.		
Q12	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.	Yes, we agree with this proposal. However, please see our response to Q13 and Q14 and suggested wording of this rule.
Q13	Do you consider that alcohol should be included in this rule? Please explain why and provide any evidence you consider relevant.	We broadly agree but would find it useful to receive clarity on what was meant by “linking” e-cigarettes with alcohol. An advert could contain images or depictions of a social environment such as a bar where alcohol may be visible. We believe this should be permitted provided that any images or depictions of alcohol are incidental and responsible. Any explicit or irresponsible connection with alcohol should be prohibited. We therefore suggest the rule reads as follows: <i>“Marketing communications / advertisements must not link e-cigarettes with illicit drugs. Any images or depictions of alcohol or gambling should be incidental and must not be socially irresponsible.”</i>
Q14	Do you consider that gambling should be included in this rule? Please explain why and provide any evidence you consider relevant.	We believe that the comments made above in relation to alcohol apply equally to gambling. Please see our response to Q12 and Q13 and suggested wording of this rule.
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.		
Q15	Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.	Yes, we agree with the inclusion and wording of this rule.
Q16	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?	We believe advertisements depicting any such situations would be caught by other rules.
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.		
Q17	Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.	Yes, we agree with the inclusion and wording of this rule. It is important in achieving CAP and BCAP’s goal of preventing advertising which might encourage children or young people to use e-cigarettes (which goal we fully endorse).
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.		
Q18	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.	Yes, we agree with the inclusion and wording of this rule. As for Rule 9, it is important in achieving CAP and BCAP’s goal of preventing advertising which might encourage children or young people to use e-cigarettes (which goal we fully endorse).
Rule 11: Marketing communications / advertisements must state that products are not suitable for under-18s.		
Q19	Do you consider that a rule is	We support a rule that requires an 18+ message.

	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.	
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. [CAP Code only]		
Q20	Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.	Yes, we agree with the inclusion and wording of this rule. It is important in achieving CAP's goal of preventing advertising which might encourage children or young people to use e-cigarettes (which goal we fully endorse). Given the importance of social media to the growth of the category, we would welcome clarity that the proposed rule is not intended to capture social media in general (i.e. only specific sites that have a 25%+ under 18 audience).
Rule 13: [Amendment to existing BCAP Rule 32.2(.7)]: 32.2 These may 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: 32.2.7 electronic cigarettes		
Q21	Do you agree with e-cigarettes being included in this list of scheduling restrictions?	Yes, we agree. Further, given the importance of reducing the chance of e-cigarette advertisements being seen by children, we would support a prohibition on broadcast advertising before 9pm.
Rule 14: Radio Central Copy Clearance – Radio broadcasters must ensure advertisements for e-cigarettes are centrally cleared.		
Q22	Given BCAP's policy consideration, do you agree that all advertisements for e-cigarettes must be centrally cleared? If you disagree, please explain why.	Yes, we agree with BCAP's proposal.
Additional Questions		
Q23	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.	We believe all of the new rules should apply to e-cigarettes that do not contain nicotine. We agree that e-cigarette advertising should not be used to indirectly promote tobacco products and therefore the advertising of all e-cigarettes (whether or not they contain nicotine) should adhere to a set of rules that ensures a responsible approach. Further, there may well be e-cigarette brands that comprise nicotine containing and non-nicotine containing variants. To have the advertising of one variant subject to a set of rules which another variant in the same brand family is not subject to would be problematic.
Q24	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, we do not consider that any additional rules are necessary. As we note above, we believe that all e-cigarettes (whether containing nicotine or not) constitute the same product category and should be subject to the same set of rules.
Q25	To what extent, if any, do you consider that the above rules for e-cigarettes should apply to those	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

	which are licensed as medicines?	<p>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).</p> <p>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.</p>
Q26	Do you agree with the proposed definition of e-cigarette? If not please explain why.	<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>
Q27	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.	No.
Q28	Are there any other comments you wish to make in relation to the advertising of e-cigarettes and BCAP’s consideration of this issue?	We refer to the introductory comments set out at the beginning of this document.

ABOUT NICOVENTURES

Nicoventures is a division of British American Tobacco but is separate from the tobacco business.

Its focus is the development and production of innovative, high quality inhaled nicotine products that meet relevant regulatory requirements. Our aim is to provide adult smokers and users of nicotine products who want to reduce, replace or stop smoking, with the best range of quality alternative products, delivering much of the experience they expect from a cigarette, but without the serious health risk of smoking.

E-cigarettes – a potential breakthrough in tobacco harm reduction?





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Section 1

Executive Summary

Smokers across the world are increasingly switching from conventional cigarettes to electronic cigarettes (e-cigarettes or e-cigs)ⁱ. In countries such as the USA, UK, Poland, Germany, France, Italy, Russia, it is estimatedⁱⁱ that there are around a million smokers each who have chosen to partially or completely switch away from tobacco smoking to 'vaping' e-cigarettes, thus reducing overall tobacco consumption at an individual as well as population level.

There is growing consensus among many in public health that e-cigarettes are generally significantly less risky than conventional cigarettes and that a switch to e-cigarettes by smokers has the potential to lead to an unprecedented public health success in terms of tobacco control and harm reduction.ⁱⁱⁱ

However there are those in position of authority who have responded to the e-cigarette phenomenon with caution, based on concerns such as gateway into smoking, (especially youth); renormalisation of smoking and continued nicotine addiction.

This document

- describes what e-cigarettes are
- explains tobacco harm reduction and nicotine's role in tobacco harm reduction
- summarises the key current science and research relating to e-cigarettes
- explains the role they can play in tobacco harm reduction by being an effective less risky alternative to combustible cigarettes
- addresses some of the category concerns raised by public health and regulators
- and explains our view of the most appropriate regulatory environment in the light of their harm reduction potential

Section 2

What are electronic cigarettes?

These products are battery-powered electronic devices that deliver a nicotine aerosol ('vapour') without tobacco smoke. The vapour is generated from a liquid formulation containing nicotine and sometimes flavours. A typical e-cigarette consists of three main components: a battery, a heating element and a cartridge containing water, nicotine and other ingredients, including glycerol or propylene glycol, known as 'e-liquid'. What looks like exhaled smoke is largely odourless vapour.

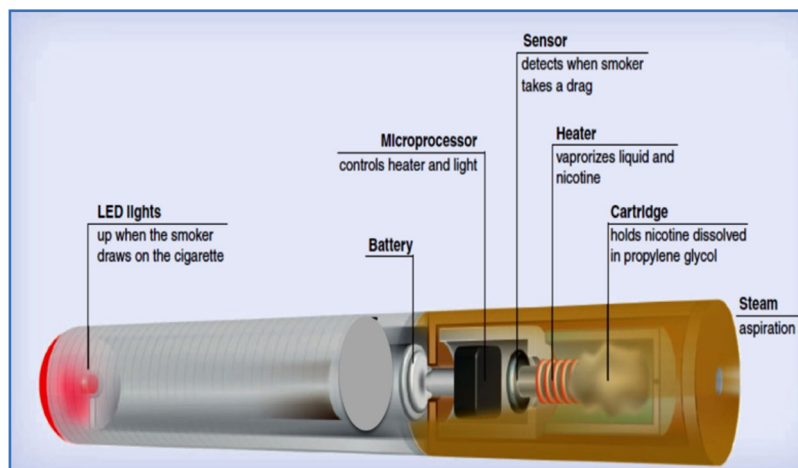


Figure 1:
*diagrammatic
representation
of an e-cigarette*

E-cigarettes fall into three broad categories, depending on whether they can be reused or not, and whether they can be customized for the composition and delivery of the e-liquid contents.

1. Disposable

A single part device which is disposed of once the battery is drained.



Figure 2:
*Vype,
example of
a disposable
e-cigarette*

2. Rechargeable

These e-cigarettes have a rechargeable battery and the e-liquid cartridges can be replaced, thus allowing for reuse.



Figure 3: Vype Reload, an example of a rechargeable e-cigarette

3. Modular

These products have a rechargeable battery and a refillable 'tank' that allows the consumer to fill (and refill) the e-liquid as required. The e-liquid can be available in a range of flavours and nicotine strengths, sold separately in vials or bottles. These products may also have many other customisable features e.g. variable voltage, puff count reader.



Figure 4: an 'eGo' style product, with refill e-liquid bottle

Section 3

What is “tobacco harm reduction”?

Harm reduction is a well-established public health concept which seeks pragmatic ways to minimise the health impact of an inherently risky activity or behaviour, without seeking to stop it entirely. Examples include the use of seat belts and airbags in cars to reduce the risks of injury or death from road traffic accidents.

The term “tobacco harm reduction” does not have a single meaning that is accepted by all. For some public health policymakers, it means urging people not to start using tobacco products or to quit if they do.

However for others it means the continued use of less risky alternatives to cigarettes without quitting nicotine usage altogether. The US Institute of Medicine, which is supportive of this view, has defined it as^{iv} “..*minimising harms and decreasing total morbidity and mortality without completely eliminating tobacco and nicotine use*”

For public health proponents of this broader approach, tobacco harm reduction means that, in addition to a continued emphasis on prevention and cessation efforts, adult tobacco consumers should have the option of being informed about and being able to choose from a range of tobacco and nicotine products that are potentially reduced-risk compared to conventional cigarettes.

The recently published UK National Institute for Health and Care Excellence’s (NICE) guidance on harm reduction approaches to smoking advocates broader use of licensed nicotine replacement therapies and clearly differentiates between the risks associated with cigarette smoking and those of using licensed nicotine products^v. The guidance also proposes that the education and training of practitioners should include the principles and practice of tobacco harm reduction.

Section 4

Nicotine's role in tobacco harm reduction

Nicotine is the addictive component of tobacco smoke, but unlike some other constituents of tobacco smoke, it is not carcinogenic and according to the UK Royal College of Physicians, 'medicinal nicotine is a very safe drug'^{vi}.

The UK Medicines Agency, MHRA, states that there is a large body of evidence that medicinal nicotine is not a significant risk factor for cardiovascular events, and does not cause cancer or respiratory disease.^{vii}

Switching to alternative nicotine products such as nicotine gums and electronic cigarettes can, therefore, help many smokers quit smoking or cut down, thereby reducing exposure to tobacco smoke and the associated harm. However, a significant number of healthcare and public health professionals still mistakenly believe that nicotine is associated with the harms from tobacco use. A recent survey of general practitioners (GPs) in the UK and Sweden revealed that some hold the view that one of the greatest health risks from smoking tobacco is nicotine^{viii}. This belief likely influences health advice to smokers when considering whether or not to recommend the use of alternative nicotine products.

Section 5

Are E-cigarettes less risky than combustible cigarettes?

E-cigarettes are believed to be less risky than conventional combustible cigarettes as:

- Do not contain tobacco
- Do not involve combustion of tobacco that leads to the formation of thousands of toxicants and carcinogens in cigarette smoke
- Nicotine is delivered in an aerosol predominantly of inert glycerol or propylene glycol

Recent review articles on e-cigarettes conclude that *“The main components of an e-cigarette (both the refill liquid and the resulting vapor) have been studied in a variety of laboratory analyses. Data from these studies suggest that the basic e-cigarette vapor is safe in the short term^x. E-cigarettes appear to be comparable in toxicity to conventional nicotine replacement products^x.”*

In a recent study by Dr Goniewicz published in the journal *British Medical Journal Tobacco Control^{xi}*, an analysis of the vapour from a wide range of commercially available e-cigarettes in Poland showed that *“the levels of selected toxicants were 9-450 times lower than in cigarette smoke and were, in many cases, comparable with trace amounts found in the reference licensed medical product”* (Nicorette inhalator).

There remains room for improvement in the quality and testing of e-cigarettes. Evidence regarding safety and quality is limited and shows variability. Levels of nicotine^{xii}, and nicotine related impurities (Trehy et al 2011) varies considerably across brands. Nicotine level can be inaccurately labelled by some manufacturers (Trehy) and there is the possibility that metals or chemicals from plastics in the delivery device may leach into the vapour before inhalation (Williams et al 2013).

A review by Caponnetto et al^{xiii} summarises this well *“The evidence noted above suggests that electronic cigarettes do not raise serious health concerns and can be seen as a safe way to smoke.”*

“Although the current data are insufficient to conclude that electronic cigarettes are safe in absolute terms and larger and longer studies are needed to comprehensively assess their safety (particularly in relation to their long-term use), these products appear to be much safer than tobacco cigarettes and comparable in toxicity to conventional nicotine-replacement products.”

Section 6

Are people using e-cigarettes to quit and or cut down?

There is emerging evidence from numerous countries in the western world regarding growing use of e-cigarettes by smokers as a substitute for smoking traditional cigarettes. The percentage of e-cigarette users among adult smokers in the UK has more than doubled from 2.7% in 2010 to 6.7% in 2012^{xiv}, and still growing.

A cross-national study of e-cigarette users in Canada, the US, UK, and Australia found that *“79.8% reported using [e-cigarettes] because they were considered less harmful than traditional cigarettes; 75.4% stated that they used ENDS (e-cigarettes) to help them reduce their smoking; and 85.1% reported using ENDS to help them quit smoking.”^{xv}*

An earlier report by Etter and Bullen^{xvi} found that among 3037 electronic cigarettes consumers, 77% used these products to quit smoking or avoid relapsing and 20% stated that they used electronic cigarettes to reduce tobacco consumption with no intention of quitting smoking. Most of the ex-smokers in that study (79%) expressed concern that they might relapse to smoking if they stopped using electronic cigarettes.

The most recent data^{xvii} from the Smoking Toolkit Study (University College London) shows that, in the UK, e-cigarettes are being used by nearly 30% of those attempting to quit smoking cigarettes and have now surpassed NRT (nicotine replacement therapy) as the aid of choice for the most recent quit attempts among the smoking toolkit study sample of smokers.

Section 7

Growing public health support for e-cigarette's role as an alternative to conventional cigarettes

The tobacco control community is split on its views regarding e-cigarettes. Many public health thought leaders are beginning to see the role that e-cigarettes can play in a broader approach to tobacco harm reduction, especially in the case of smokers who cannot or will not stop smoking. Those who support this category do so based on emerging usage data among smokers using e-cigarettes to substitute for their smoking, the fact that e-cigarettes are not tobacco products and that the e-cigarette vapour and nicotine by itself (without cigarette smoke) are likely to have a significantly lower risk profile.

Action on Smoking and Health (ASH) UK, an anti-smoking charity, has expressed support for e-cigarettes^{xviii} stating *"...because relapse is high and nicotine addiction is so strong, a harm reduction approach which helps smokers switch from dangerous smoked tobacco products to safer alternative nicotine delivery devices should be encouraged since most of the harm comes from inhaling tobacco smoke...some people have managed to quit smoking by switching to E-cigarettes..."*

ASH (UK) report that *"electronic cigarette current use has grown among smokers and ex-smokers and remains at 0% among those who have never smoked. Ex-smokers report having used e-cigarettes to help a quit attempt (48%) to prevent relapse to tobacco use (32%)"*.^{xix}

In their publication on e-cigarette use in the UK, Martin Dockrell and Professor Ann McNeill write that *"the failure to support and educate smokers on the effective use, risks, and benefits of e-cigarettes may represent a lost opportunity for public health"*.^{xx}

Dr Carl Phillips, a public health expert and the Scientific Director of the American 'Consumer Advocates for Smokefree Alternatives Association' has stated that^{xxi} *"Considering that the electronic cigarette is perceived as a health concession for adults, the high start-up costs and the easy accessibility of tobacco cigarettes, electronic cigarettes are unlikely to appeal to new smokers in significant numbers. Additionally, given the fact that current users claim that electronic cigarettes make tobacco smoke taste considerably foul, in the unlikely event that a new smoker chooses electronic cigarettes over tobacco cigarettes, the chance they will find tobacco smoking appealing is even less."*

Professor Michael Siegel, Professor of Public Health at Boston University, USA, has published *“We conclude that electronic cigarettes show tremendous promise in the fight against tobacco-related morbidity and mortality. By dramatically expanding the potential for harm reduction strategies to achieve substantial health gains, they may fundamentally alter the tobacco harm reduction debate.”*^{xxii}

The American Association of Public Health Physicians (AAPHP) states^{xxiii} that they *“...favor a permissive approach to E-cigarettes because the possibility exists to save the lives of four million of the eight million current adult American smokers who will otherwise die of a tobacco related illness over the next twenty years. The only feasible way to achieve this remarkable public health benefit will be to inform smokers of the differences in risk posed by different categories of nicotine-delivery products. Conventional cigarettes account for about 80% of nicotine consumption in the United States, but more than 98% of the illness and death. This harm is not caused by the nicotine, but by toxic products of combustion. A cigarette smoker can reduce his or her risk of future tobacco-related death by 98% or better by switching to a low risk smokeless tobacco product. He or she could cut that risk by 99.9% or better by switching to a nicotine-only delivery product like one of the pharmaceutical products or E-cigarettes. Experience suggests that E-cigarettes may be more acceptable to smokers than the currently available pharmaceutical alternatives...E-cigarettes can and should be marketed as a substitute for conventional cigarettes for smokers unable or unwilling to quit...”*

In a recent letter written to the European Commission, senior public health thought leaders, tobacco control advocates and e-cigarette researchers from around the world lend their support to the e-cigarette category^{xxiv} *“In conclusion, electronic cigarettes have a very good safety profile and are likely to provide a gateway away from rather than into smoking. Users should be allowed to identify a product and dosage that suit them rather than have regulators decide what they must use. Evidence-based and proportionate regulation should be implemented, and all stakeholders should be involved in the regulatory process. If wisely regulated, electronic cigarettes have the potential to obsolete cigarettes and to save millions of lives worldwide. Excessive regulation, on the contrary, will contribute to maintain the existing levels of smoking-related disease, death and health care costs.”*

Section 8

Are any of the e-cigarette category concerns justified?

Some in the public health community have concerns regarding the safety profile of e-cigarettes and the role that e-cigarettes may play in renormalizing smoking and attracting youth to tobacco use. Although much more research needs to be done to confirm the longer term population level benefits of e-cigarettes, most of the current data trends are reassuring and do not support the abovementioned concerns. The following is an issue-by-issue explanation of the concerns among public health regarding e-cigarettes and evidence and arguments to counter those.

Gateway

There is a concern among some in public health that the unregulated mass availability of e-cigarettes may act as a “gateway” to use of conventional combustible cigarettes, especially among adolescents and youth.

E-cigarettes are a relatively new category, and there is no meaningful data to support the concerns.

On the contrary, evidence from a survey conducted by the UK’s ASH^{xix} shows that “**Among children** regular use of e-cigarettes is extremely rare. Children who had heard of e-cigarettes were asked about their use and knowledge of them. What little use that is reported is confined almost entirely to children who currently smoke or used to smoke.

- 1 in 10 16-18 year olds who had heard of e-cigarettes (1 in 20 among 11-15 year olds) has “tried e-cigarettes once or twice”.
- 1 in 100 16-18 year olds (0% 11-15 year olds) uses e-cigarettes more than once a week.”

ASH also reports from that survey that

- **Among young people** who have never smoked 1% have “tried e-cigarettes once or twice”, 0% report continued e-cigarette use and 0% expect to try an e-cigarette soon.
- **Among adults** electronic cigarette current use has grown among smokers and ex-smokers and remains at 0% among those who have never smoked. Ex-smokers report having used e-cigarettes to help a quit attempt (48%) to prevent relapse to tobacco use (32%).

The only study repeatedly quoted to support the ‘gateway’ argument is a recent National Youth Tobacco Survey study from the US Centre for Diseases Control^{xxv}. This study conducted among middle and high school students reported on ever use of e-cigarettes (3.3% in 2011 and 6.8% in 2012) – and use in past 30 days (1.1% in 2011 and 2.1% in 2012). Based on the data, the CDC claimed that *“many kids are starting out with e-cigarettes and then going on to smoke conventional cigarettes”*. Given the significant increase in the profile of e-cigarettes over the timescale of the survey, some increase in exposure is perhaps not surprising, but there has been criticism of the conclusions and press releases from this survey for the following reasons:

- No questions on history of past use and progression from vaping to smoking were asked in the questionnaire, therefore the study cannot be used to conclude that e-cigarettes have acted as a ‘gateway’
- Similarly, as the study was only a snapshot and did not track youth over multiple time points to determine their vaping and smoking patterns, it would not be suitable to draw any conclusions on e-cigarette users subsequently switching to cigarettes, and
- No data were reported on regular use of e-cigarettes

Dual Use

Some among tobacco control are concerned that most e-cigarette consumers may choose to use e-cigarettes while maintaining their smoking habit and consequently, rather than promoting cessation/reduction, e-cigarettes will cause the overall nicotine consumption to remain the same (or increase) and the full benefit of quitting will not be realised.

The evidence from our own consumer insights research from a number of markets as well as scientific surveys published by public health researchers seems to show that dual use is typically accompanied by a reduction in the consumption of cigarettes.

In a recent paper published by Goniewicz^{xxvi}, it is reported that *“in smokers who are using e-cigarettes as well, the number of cigarettes per day have decreased significantly since they have started vaping. E.g. Cigarette consumption following e-cig use fell from >20 cig/day among 50% of respondents to >20/day among 2% of respondents”*.

Similarly, the International Tobacco Control Policy Evaluation Project, an international tobacco control project, found in its 4-country survey^{xv}: *“Consistent with previous research, the majority of survey participants indicated that they used ENDS (e-cigarettes) to reduce the harm of traditional cigarettes or to help them quit traditional cigarettes.”*

The ASH survey from the UK reported that *“Around 170,000 people (in the UK) may have replaced smoking (entirely) with e-cigarette use”^{xiv}*

There is also potential to expect that experiences with NRT in this area will apply: Those who use NRT to reduce cigarette smoking are ultimately more likely to make a quit attempt and have higher cessation rates.^{xxvii}

Renormalisation of smoking

Some commentators worry that e-cig advertising, widespread availability and their use in public places is undermining tobacco control measures and may re-normalise smoking and nicotine consumption. This they believe, can reverse the gains achieved over the past few decades in tobacco control.

E-cig use is on the rise in many markets across the world, however, there is no evidence to date that e-cig use leads to a re-normalisation of cigarette use. In fact, as the evidence shows, e-cig users are either smokers or ex-smokers, driven by their need to switch to a less risky alternative to smoking. The ultimate determinant will be the impact on smoking prevalence.

Data from an ASH-UK survey found that: *“While we found evidence supporting the view that e-cigarette use may be a bridge to quitting, we found negligible evidence of e-cigarette use among those who had never smoked. The failure to support and educate smokers on the effective use, risks, and benefits of e-cigarettes may represent a lost opportunity for public health”^{xiv}*

Maintenance of addiction

Nicotine’s safety profile is not clearly understood among a significant proportion of the society, including healthcare professionals (as evidenced by our GP survey).^{ix} Hence, not just quitting tobacco use, but quitting nicotine use is seen by many as the ultimate goal of tobacco control.

Addiction is defined by a compulsive behaviour in spite of knowing the adverse consequences of the behaviour for the user’s health, family and social life. Given that e-cigarettes are being increasingly considered to be significantly less risky than conventional cigarettes^{xxviii}, habitual use of e-cigarettes for nicotine consumption cannot have the same individual and societal implications as nicotine addiction from conventional cigarettes.

The relative low risk of e-cigarettes notwithstanding, e-cigarettes have been found to be less habit-forming than cigarettes in four surveys^{xxix} of vapers (*convenience samples*),

- E-cigarettes were perceived as less addictive than cigarettes
- Time (minutes) between waking up and time to first use was longer for e-cigs than for cigarettes
- Only 18% craved e-cigarettes as much as tobacco.

Second hand vapour exposure

E-cigarettes emit a smoke-like vapour and can therefore be perceived to have the same risk profile as that of second hand cigarette smoke. Policymakers and lay people might therefore make ill-informed choices in terms of imposing the same public place restrictions on vaping as applied to cigarette smoking. Based on scientific evidence on the contents of the e-cigarette vapour in a systematic review of the existing literature on vapour chemistry and toxicological reports on vapour constituents, Prof Igor Burstyn concludes^{xxx} that *“Comparisons to the most universally recognized workplace exposure standards, Threshold Limit Values (TLVs), were conducted under “worst case” assumptions about both chemical content of aerosol and liquids as well as behaviour of vapers. The calculations reveal that there was no evidence of potential for exposures of e-cigarette users to contaminants that are associated with risk to health at a level that would warrant attention if it were an involuntary workplace exposures.”*

Section 9

How should e-cigarettes be regulated?

Given the potential of inhaled nicotine products to play a significant role in tobacco harm reduction we believe they should be regulated in a way that encourages responsible growth of a potentially extremely beneficial category.

Specifically we want to see a regulatory regime that puts product quality and consumer safety first whilst at the same time allowing for swift innovation, and for distribution and appropriate marketing freedoms which will promote the growth of the category.

In the light of this, we do not think it makes sense for e-cigarettes to be regulated in the same way as tobacco products as they contain no tobacco and are substantially less risky than cigarettes.

Currently, various regulators are considering whether e-cigarettes should be treated as medicines or as general consumer products. However, we do not think that the existing strict medicines regimes in many countries or current consumer product regulations are appropriate without modifications which take into account the specifics of this new category.

Specifically:

- Strict medicines regimes which restrict availability and impact innovation are not appropriate. However, if a medicines regulator is willing to adopt a light-touch medicines approach focusing on quality and safety, responsible marketing, product access wherever cigarettes can be found and an approval process which does not stifle innovation, we will support them.
- General consumer product regulations without product quality and safety standards are also not appropriate. Consumer and regulator confidence in the safety and quality of the products is vital and consequently any regime should be based on appropriate product standards. It is also important that sales and advertising rules appreciate that these are not products that should be marketed to children.

We believe that an appropriate regulatory regime for e-cigarettes should be based on the following principles:

Product Standards

Proper product standards need to be introduced to reassure smokers and regulators that the products on the market meet appropriate criteria with regards to quality and safety. The standard should include standards related to e-liquid content, aerosol content, product stability, content labelling, device safety, child proofing. We have developed a proposed set of detailed standards which we would be happy to share.

Appropriate Marketing Freedoms

With the growing acceptance among public health professionals of the potential of nicotine containing products to aid smoking reduction and cessation, we believe that it makes sense to permit broad freedoms for marketing to adult smokers and users of other nicotine products. However given that they contain an addictive substance we also believe that appropriate restrictions on marketing to children are also appropriate.

Distribution Freedoms

In order for e-cigarettes to fulfil their true potential as a viable option to cigarettes, they have to be widely available in all the retail channels where smokers today buy their cigarettes, including the internet.

Innovation Freedoms

The category is still relatively young and product improvement and innovation will further improve functionality and quality as the category grows. Consequently, there should be regulatory oversight by a competent body which provides comfort that the product standards are being complied with, but does not impede swift and flexible innovation.

Tax

E-cigarettes are not tobacco products and are significantly less risky alternatives to smoking tobacco. Consequently, we do not think it is appropriate for e-cigarettes to be subject to excise taxes as this is likely to undermine their public health impact.

No sales to under 18s

Given that they contain an addictive substance restrictions on sales to under 18s should be introduced.

Section 10

References

For further information *please click on the yellow links.*

ⁱAction on Smoking and Health (ASH) UK – Briefing on electronic cigarettes, June 2013: *“According to a survey commissioned by ASH in the UK, 3% of smokers reported using e-cigarettes in 2010, a figure that increased to 7% in 2012 and 11% in 2013. Similarly, the number of people reporting having tried e-cigarettes has increased significantly, more than doubling from 9% in 2010 to 22% in 2012 and 35% in 2013.”*

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ⁱⁱⁱProfessor John Britton, Tobacco Advisory Group, Royal College of Physicians. 11 February 2013.

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^{iv}Clearing the Smoke – Assessing the Science Base for Tobacco Harm Reduction, Institute of Medicine (2001).

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- ^{xv}Electronic Nicotine Delivery Systems: International Tobacco Control Four-Country Survey. Atkinson SE, et. al. *American Journal of Preventive Medicine* 2013.
- ^{xvi}Electronic cigarette: users profile, utilization, satisfaction and perceived efficacy. Etter JF, Bullen C. *Addiction* 2011.
- ^{xvii}Link: <http://www.smokinginengland.info/latest-statistics/> accessed on 29th January 2014.
- ^{xviii}Extract from ASH UK's response to Consultation Letter MLX 364, 1 February 2010, UK Medicines and Healthcare Products Regulatory Agency.
- ^{xix}Action on Smoking and Health Fact Sheet, May 2013, based on a survey in the UK among 2178 children aged 11-18.
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- ^{xx}E-Cigarettes: Prevalence and Attitudes in Great Britain. Dockrell et al. May 2013. *Nicotine and Tobacco Research*. doi:10.1093/ntr/ntt057
- ^{xxi}Link: http://casaa.org/uploads/8_Biggest_Electronic_Cigarette_Myths.pdf accessed on 31st March 2014.
- ^{xxii}Electronic cigarettes as a harm reduction strategy for tobacco control: A step forward or a repeat of past mistakes?' Cahn, Z and Siegel, M. *Journal of Public Health Policy*, (2011) 32, 16–31. doi:10.1057/jphp.2010.41
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^{xxvi}Patterns of electronic cigarette use and user beliefs about their safety and benefits: An Internet survey, Goniewicz et al, 2013, Drug and Alcohol Review, 32, 133-140

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AP and BCAP Consultation on the Marketing of E-Cigarettes
Response from North East Lincolnshire Smokefree Alliance

Please find detailed below our responses to the consultation questions raised concerning the marketing of e cigarettes.

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?

Response : Although we agree with the inclusion of the rule, we feel that the wording as proposed is very open to interpretation . We are particularly concerned that advertisers might create an image for ecigarettes that suggests that they are cool or sophisticated with the aim of drawing in non smokers. We consider that the adverts should be required to include that “the product contains nicotine which can damage your health” as there is still a widespread view that ecigarettes are a healthy rather than healthier alternative to smoking. There is also a need for the advert to indicate that they should be stored safely away from children, should be charged in accordance with the manufacturers instructions and disposed of correctly.

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?

Response: We agree that there is a need for this rule as many brands of electronic cigarettes are now produced by tobacco companies who will be keen to covertly exploit any marketing opportunity to link their tobacco branding . We believe that more clarity needs to be provided and would support the suggested wording by ASH which says :-
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.

We would also ask that the term “phrase” is included in this rule to prevent any common wording being used to link ecigarettes and 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.

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.

Response: We agree with the proposed wording of this rule as it stands.

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.

We agree with this rule and they should be required 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. We would 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 .

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

Response: We agree with this rule. There is we believe a misunderstanding that e cigarettes are not as addictive as tobacco and some reference to the addictive nature of nicotine would we feel be useful including the fact that it can damage your health.

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

Response : We agree that this rule should be included but wonder how effectively it can be policed 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.

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.

Response: This is a rapidly developing market and it would seem sensible we feel to include this rule even though we currently have little evidence that links are being made with these products.

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?

Response : 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.

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.

Response: We strongly support 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 have for improvement.

Response: We support this rule being based on the age of 25 and would not support the suggestion that this should be reduced to 18. The big concern we still have is that ecigarettes will become a gateway to smoking to young people and to allow an age restriction of just 18 would allow marketing to be targeted at the older teenage market. Smoking by 16 year olds has dropped dramatically in our area and the surveys we have carried out to date show that although 15% of Year 11 children have tried e cigarettes in our area, the vast majority of these at the moment are existing smokers. E cigarettes are easily accessible and affordable by young people and If a culture of ecigarette smoking by young people develops, it will have implications for years ahead and until we have a much better idea of how the overall ecigarette market will impact on both young people and adults, it is important that they are only marketed at existing adult smokers.

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.

Response: We agree with this rule and this will tie in with legislation that will soon make it illegal to sell ecigarettes to under 18 year olds. The requirement that e cigarette marketing should be socially responsible would not in itself be enough of a safeguard to avoid the need for this 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 have for improvement.

Response: We agree with the inclusion of this rule and feel it will help to prevent advertising of cigarettes in young people focussed literature .

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?

Response: We agree that electronic cigarettes should be included in this list.

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?

Response: We would support this rule

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?

Response: There is a plethora of marketing terms used to describe ecigs that contain nicotine and non nicotine ie e-shisha, e-hookah, clearomiser, cartomiser, vapouriser etc. which serve to confuse the public. Some are also referred to as pens or e sticks rather than cigarettes and it would seem sensible to have the same rules for all cigarettes whether or not they contain nicotine. There is a danger that any reduction in restrictions applying to non nicotine based e cigs can be exploited to subtly advertise related ones containing 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?

Response: 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.

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

Response : We feel that it would be sensible to use the same definition as that used in the EU Tobacco Products Directive to keep consistency and avoid confusion but should include non-nicotine containing devices as well .

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?*

We have no additional comments to make in relation to these questions

Response to the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) consultation on the marketing of electronic cigarettes (e-cigarettes)

This response to the CAP and BCAP consultation document is submitted on behalf of the Nottinghamshire Strategic Tobacco Alliance Group (STAG). The STAG is a multi-agency partnership focused on setting the strategic direction of tobacco across Nottinghamshire. The group is chaired by the Deputy Director and Consultant in Public Health. The group is accountable to the sub group of the Health and Wellbeing Board called the Health and Wellbeing Implementation Group and has representatives from district/borough councils, trading standards, HMRC, police Fire and rescue, academia and public health.

Key messages;

- An e-cigarette, or electronic cigarette, is designed as a substitute for tobacco smoking. Some look and feel like conventional cigarettes; however others devices bear less of a resemblance. More and more people are using e-cigarettes
- There are many different manufacturers and types of e-cigarette available
- The long term health effects are unknown
- Some contain nicotine and some don't
- There is a lack of specific regulation at the moment
- Current scientific evidence suggests using electronic cigarettes is much less harmful than smoking, but this may be dependent on their content. A significant proportion of current consumers ¹ use them in an attempt to quit but current evidence does not suggest that they are effective in supporting this over and above more traditional NRT. The British Medical Association (BMA) advises that "...while e-cigarettes are unregulated and their safety cannot be assured, they are likely to be a lower risk than continuing to smoke."² **However, as yet there has been no research to assess the long term health effects of using electronic cigarettes.**
- Nonetheless, advertising and promotion of products containing an addictive drug should always be subject to close supervision by regulatory authorities, since addiction undermines the principle of informed consent by adult consumers.

Under the EU Tobacco Products Directive cross-border advertising of electronic cigarettes will be unlawful after the Directive comes into effect (likely in about mid-2016), unless they are authorised as medicinal products. This means that no TV, radio, electronic or print advertising will be allowed. The advertising permitted will essentially be limited to advertising which only has domestic reach such as billboard, bus and point of sale. The UK Medicines and Healthcare Products Regulatory Agency (MHRA) has said that it: "continues to encourage companies to voluntarily submit medicines licence applications for electronic cigarettes and other nicotine containing products as medicines".

General Principles

We therefore recommend that the revised set of rules adopted by CAP and BCAP following this consultation should be consistent with the following principles:

1. Electronic cigarettes should not be advertised or promoted in ways that could reasonably be expected to promote smoking of tobacco products.

¹ Survey of smokers' attitudes to e-cigarettes. YouGov 2010. Total sample size was 1380 UK adult smokers.

² BMA calls for stronger regulation of e-cigarettes: A briefing from the board of Science and the Occupational Medicine Committee, March 2012 (updated January 2013)

2. As far as possible, electronic cigarettes should be advertised as an alternative to smoking cigarettes or other tobacco products.
3. Electronic cigarettes should not be advertised in ways or through channels that could reasonably be expected to make them appealing to non-tobacco users.
4. Electronic cigarettes should not be advertised in ways or through channels that could reasonably be expected to make them appealing to children and young people
5. Electronic cigarette advertising should always include a clear warning that they contain nicotine, an addictive drug, and a toxic substance that should be stored and consumed safely and away from children.
6. Where e-cigarette products do have a medicines licence, they should be advertised and marketed in a way that is appropriate for medical and healthcare products, which may include specific claims of health benefits (e.g. that they may help in quitting smoking), where these are well supported by scientific evidence.

Answers to Consultation 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?

We agree with the principle that e-cigarette advertising and promotion should be socially responsible. For example;

- Electronic cigarettes are an alternative to tobacco, and that they are therefore not suitable for use by people who do not currently use tobacco products.
- A prohibition on wording that suggests that consumption of electronic cigarettes has positive qualities that may be mistakenly perceived to exist by consumers, as a consequence of the addictive nature of the product. 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. Also could this include reference to not making the products attractive to opposite sex.
- All advertising should contain a prominent reference to the toxicity of nicotine and the need to store and use e-cigarettes and refill containers safely and away from children.

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 proposed rule as a starting point but believe it needs to be strengthened. We would recommend the inclusion of a general prohibition on any design, colour, imagery, logos 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.

This is needed 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.

“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. This rule is not intended to prevent cigarette-like products from being shown, **but they must not be shown in ways that promote smoking or tobacco 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.

We agree with the proposed wording (including square brackets) of this rule, except that we would recommend a requirement to present electronic cigarettes as an alternative to tobacco. This is in line with rule 1 as advertising and promotion should be directed at existing tobacco users and not at potential new users of nicotine.

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.

We agree with the inclusion this rule. However, the suggestion for revised wording is: “Marketing communications / advertisements must make clear that the product is an electronic cigarette **and should not use any descriptor that might reasonably be expected to create confusion with cigarettes.**”

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.

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.

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 the inclusion and wording of this rule, with the following proposed amendment.

We welcome the statement that the Committees “are concerned that advertising should not be a medium by which people are encouraged to begin or re-establish the use of nicotine”. However, our support for rule 6 depends on acceptance of our modified rule 3 and 1 above that, all electronic cigarettes should be *required* to be advertised and promoted as an alternative to tobacco.

We would suggest wording around explicitly and implicitly as 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 e-cigarette manufacturer to target those who do not currently use tobacco.

Wording to read;

Marketing communications / advertisements must not encourage **either explicitly or implicitly**, non-smokers or non-nicotine users to use e-cigarettes.

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.

We consider that two principles should be applied in a revised wording of this rule. First: no advertisements or communications should present electronic cigarettes in such a way as to glamorise 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. For cigarettes there is a strong association between drinking and fires from cigarettes or cigarette materials and a lot of work from our colleagues in the Fire and Rescue Service is about minimising these risks.

We of course agree that electronic cigarettes should not be associated with illegal drugs. We also agree that they should not be associated with gambling.

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?

We agree with the inclusion and wording of this rule.

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 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. 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 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 about them growing up, getting married and one persuading the other to swap cigarettes 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 agree with this rule.

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.

This links with general principles and 9 which require that e-cigarettes are never advertised or promoted in a way that could appeal to young people and non-tobacco users.

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.

We agree with the inclusion and wording of this rule.

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 the inclusion of electronic cigarettes in this list.

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?

All electronic cigarette advertisements should be centrally cleared prior to publication/transmission.

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 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 our comments on Rule 5 above.

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?

The same rules should apply to electronic cigarettes that are licensed as medicines as to those that are not, except that licensed products should be able to include specific health claims in advertisements where they are well supported by scientific evidence. For example, licensed products should be able to advertise as products licensed as aids to cutting down and stopping smoking. 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.

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

We agree with the proposed definition of electronic cigarettes, as it is taken directly from the wording of the EU Tobacco Products Directive, with the addition of non-nicotine containing products.

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 no reference to use of social media in the rules as currently drafted. Social media is a rapidly growing medium which has been used to promote electronic cigarette use and ASH believes this is a major challenge which needs to be considered by CAP.

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.