

## Public Health (Wales) Bill: Consultation questions

### Tobacco and Nicotine Products

The Bill includes proposals to ban the use of nicotine inhaling devices, such as e-cigarettes, in enclosed spaces like restaurants, pubs and at work. Shops will also have to join a register for retailers of tobacco and nicotine products, and it will become an offence to “hand over” tobacco and e-cigarettes to anyone under the age of 18.

#### *Question 1*

Do you agree that the use of e-cigarettes should be banned in enclosed public and work places in Wales, as is currently the case for smoking tobacco?

No. It is common error for public health advocates to believe that their personal preference should become law. But the purpose of law in this case is to override the preferences of owners or managers. Many places will decide to ban vaping without needing the law to tell them. However, the test of the credibility of this law is where it would actually bite: where legal powers are used to stop an owner or manager allowing it. As examples, this could arise in the following situations:

1. A pub wants to have a vape night every Thursday
2. A pub want to dedicate one room to allowing vaping
3. In a town with three pubs, one decides it will cater for vapers
4. A pub manager decides on balance that his vaping customers prefer it and his other clientele are not that bothered – he’d do better allowing it
5. A hotel decides it want to have a few rooms in which it allows vaping
6. An office workplace decides to allow vaping breaks near the coffee machine to save on wasted smoking break time
7. A care home wants to allow an indoor vaping area to encourage its smoking elderly residents to switch during the coming winter
8. A vape shop is trying to help people switch from smoking and wants to

demo products in the shop...

... and so on for cafes, restaurants, hotels, workplaces, institutions, shops, transportation etc.

The purpose of a legal ban would be to use the coercive force of law to override these choices and substitute a uniform and inflexible prohibition. So what justification would be need for such a blunt and coercive intervention? The government can only really justify this intervention if there is evidence that one person's vaping causes material harm to someone else and therefore that bystanders (especially workers) need legal protection whatever the owner or manager wants to do. But there is no evidence whatsoever of harm from "second hand vapour" and all the most credible reviews of vapour chemistry give no grounds for concern:

- Burstyn I. Peering through the mist: systematic review of what the chemistry of contaminants in electronic cigarettes tells us about health risks, *BMC Public Health* 2014; **14**:18. doi:10.1186/1471-2458-14-18 [[Link](#)]
- Farsalinos KE, Polosa R. Safety evaluation and risk assessment of electronic cigarettes as tobacco cigarette substitutes: a systematic review. *Ther Adv Drug Saf* 2014; **5**:67–86. [[Link](#) ]
- Hajek P, Etter J-F, Benowitz N, Eissenberg T, McRobbie H. Electronic cigarettes: review of use, content, safety, effects on smokers and potential for harm and benefit. *Addiction*. 2014 Aug 31 [[link](#)]

So if there are no grounds for believing that vaping harms bystanders, then the Assembly should ask what other rationale there is for an imposition of the law to override thousands of decisions made individually by the owners and managers of enclosed spaces, who might reasonably feel they are better placed than ministers to judge their interests and the interest of their clients. A better approach would be for the government either to stand aside or to provide reliable information and issue-framing to help owners and managers make decisions.

### **Inappropriate policy-making by analogy**

The problem with this measure is evident in the way the question is asked: it is policy-by-analogy, and reckless analogy. The question states: "...as is currently the case for smoking tobacco" and the Explanatory Memorandum states (para 49): "*The purpose of the Bill provisions is to bring the use of e-cigarettes into*

*line with existing provisions on smoking.” Why – on what basis? This policy-by-analogy overlooks three important differences between smoking and vaping:*

1. Vaping is likely to be at least 95% lower risk to the user than smoking
2. There is no evidence or reason to think that vapour emissions pose a threat to the health of bystanders
3. E-cigarettes are used as alternatives to smoking by people trying to improve their health and wellbeing, while continuing to use nicotine.

It should be obvious that bringing vaping and smoking provisions “into line” does not follow from these difference and it does not even sound like a good idea. In fact, because they are alternatives and substitutable, restrictions on vaping amount to a protection of the cigarette trade and encouragement to smoking. The Bill would have the opposite effect of that intended.

## *Question 2*

Do you believe the provisions in the Bill will achieve a balance between the potential benefits to smokers wishing to quit with any potential dis-benefits related to the use of e-cigarettes?

No. The benefits of e-cigarettes are real and follow from common sense as well as the available data: that people act in their own interests and use much lower risk products to reduce their health risks and improving their personal and financial wellbeing. Those, like the Health Minister, suggesting that people do not use these products in a way that benefits their health should bear the burden of proof – to show that these much less dangerous products somehow shape people’s behaviour so that they do more damage to health.

The Welsh Government’s analysis does not even recognise the potentially harmful impact of bans on indoor vaping mandated by law. These include:

- Degrading the attractiveness of e-cigarettes as an alternative to smoking and so protecting the cigarette trade through reduced switching or increased relapse to smoking;
- The harmful effects of forcing vapers to join smokers to use e-cigarettes – discouraging switching and promoting relapse;
- The possibility that vaping bans in public places will discourage people from visiting hospitality venues and so encourage more smoking in the home with

greater direct impacts role-modelling effects on children.

## **Deprivation – vaping as a strategy for health inequalities**

Given the pro-poor character of the Welsh Government, it is particularly disturbing that the Welsh Government has not embraced the potential of vaping to improve health among Wales' most deprived communities, where smoking is most pervasive and intransigent.

From Tobacco and Health in Wales 2012 [\[link\]](#)

*“Smoking causes nearly one in five of all deaths and around one third of the inequality in mortality between the most and least deprived areas in Wales,*

*“Smoking rates are highest in the most deprived areas of Wales. More than 40 per cent of people who have never worked or are unemployed are current smokers, with no recent signs of this figure decreasing. Smoking rates in managerial and professional groups continue to fall. These trends are likely to contribute to widening health inequalities in the future.”*

Low-income status is associated with stronger nicotine dependence [1] and though the most deprived smokers are just as likely to try to quit smoking, they are about half as likely to succeed as the most affluent smokers [2]. It follows that a strategy to reduce harm to continuing nicotine users is a promising opportunity for poorer smokers. If there is no need to fully break from nicotine to attain significant benefits, then there is likely to be a greater chance of success among the poorest smokers than insisting (i.e. hoping) that they will quit smoking and nicotine completely.

Potential benefits to low-income smokers quitting by switching to vaping:

- Improved health outlook with respect to major diseases
- Better fitness and reduced morbidity, including better fitness to work
- Sense of control, achievement and reduced stigma
- Improved family finances with knock on benefits to children
- Reduced second hand smoke exposure – 39 per cent of Welsh children live in households where at least one adult is a current smoker
- Reduced hospital admissions: there were over 28,000 smoking related admission in Wales in 2011 (latest), with more than twice the rate in the most deprived communities as least deprived (2,037 vs 939 per 100,000).

A better public health and health inequalities strategy would be to maximise the potential opportunities of vaping rather than see only threats.

[1]. Pennanen M, Broms U, Korhonen T, Haukkala A, Partonen T, Tuulio-Henriksson A, et al. Smoking, nicotine dependence and nicotine intake by socio-economic status and marital status. *Addict Behav* 2014; **39**(7):1145–51.

[2]. Kotz D, West R. Explaining the social gradient in smoking cessation: it's not in the trying, but in the succeeding. *Tob Control* 2009; **18**: 43–6.

### Question 3

Do you have any views on whether the use of e-cigarettes re-normalises smoking behaviours in smoke-free areas, and whether, given their appearance in replicating cigarettes, inadvertently promote smoking?

Why would vaping normalise smoking, when it is an alternative to smoking? If anything the presence of e-cigarettes in places where people can no longer smoke serves as an advertisement for switching to vaping – and therefore is a form of covert stop-smoking message and pro-health role-modelling. This would be similar to more people visibly drinking water in bars – it does not normalise vodka drinking, but offers the normalisation of an alternative pro-health behaviour. To my knowledge the Welsh Government does not collect the Welsh survey data that it could use to develop evidence-based Welsh policy. The authors of the English Smoking Toolkit survey conclude:

*Evidence conflicts with the view that electronic cigarettes are undermining tobacco control or 'renormalizing' smoking, and they may be contributing to a reduction in smoking prevalence through increased success at quitting smoking*  
West R. Brown J, Beard E. *Trends in electronic cigarette use in England*. Smoking Tool Kit Study. 13 June 2014 [\[link\]](#)

I am unaware of any differences between the English and Welsh populations that would incline Welsh citizens to confuse smoking and vaping or to be led into smoking when presented with e-cigarettes. If the Welsh Government believes there is a difference, it has not so far explained what it is.

**The importance of listening to real people**

Most of the arguments that suggest a problem with e-cigarettes are in the form of implausible abstract hypotheses advanced by public health campaigners with no direct familiarity with smoking or e-cigarette use. I strongly recommend that both the Welsh Government and Assembly Members take into account the direct experience of those whose lives have been changed by e-cigarettes. Thousands of powerful testimonials are gathered on the Internet [1]. Five examples suffice to make the point:

*"Vaping has probably saved my wife's and my own life's, I was a smoker for 50 years, nothing I have ever tried has had the impact of vaping, this alone was the only thing that saved me, how can governments legislate against something that is saving so many people's lives"*

*"In 5 days (the 25th sept) I will have been tobacco free for 2 years, I smoked for over 40 years & had given up giving up ... that is until I tried an ecig. I stopped smoking within 24hrs, I now feel fitter my bank account is noticeably fitter, It's like I turned the clock back 20 years. But then public health people are not really interested in people like me because I don't know what I'm talking about."*

*"I am 48 now and have been tobacco free for more than two years, with only 3 one day lapses, one of which was last week. Tobacco use has been a way of life and experience has shown I will never be free from the desire having quit for more than 12 months 3 times in the past. Vaping has freed me from the terror of tobacco, without it I will revert sooner or later."*

*"I was a smoker for 30-35 years, I tried an e-cig & my tobacco consumption dropped to 1/4 in the first week, I bought a second e-cig & I found no time to smoke. That was 6 months ago & I've not touched a cigarette since. I'm now mixing my own e-liquids and even though I'm not working, I have found the money saved allows me to buy gifts for my family, fuel for my car, pay the bills etc."*

*"I smoked for 45 years and tried every NRT product available, none of them worked. I continued to smoke even though my health was getting worse, resulting in COPD and using oxygen daily. September 2011 I discovered e-cigarettes and they worked. It was like someone handed me a miracle. In less than a week I stopped using regular cigarettes. I haven't had a tobacco cigarette since."*

[1] Examples from Counterfactual. Vaping testimonies. clivebates.com. Updated May 2015. [\[link\]](#) See also AussieVapers forum, Your story. [\[link\]](#) Consumer Advocates for Smoke-free Alternatives Association (CASAA), E-cigarette user testimonials. [\[link\]](#) for thousands of examples.

These testimonies are not a substitute for quantified data (which also tell a very positive story) but a qualitative augmentation of what we know statistically, and a window into how the experience works in practice. Welsh public health policy should be aiming to secure as many personal success stories of this nature as possible – not rejecting the idea because public health activists would rather everyone stopped using nicotine altogether – the so-called “quit or die” philosophy.

#### *Question 4*

Do you have any views on whether e-cigarettes are particularly appealing to young people and could lead to a greater uptake of their use among this age group, and which may ultimately lead to smoking tobacco products?

Observations of e-cigarette use among young people are exactly what would be expected and provide no basis for concern. This is despite many misguided effort to create a moral panic – many of which are cited as evidence in the Explanatory Memorandum. This is what a neutral observer would expect to see:

1. Some adolescents imitating or trying adult behaviours or experimenting with e-cigarettes
2. Growth in use among adolescents increasing in line with growth in adult society
3. Adolescents with independent ‘risk factors’ for smoking being more likely to try e-cigarettes – either as users or experimenters. These risk factors (poor, smoking in the family, smoking peers, poor educational attainment etc) create a ‘shared liability’ that explains why most e-cigarette use is by smokers;
4. Very low use among non-smokers, but even where it is found, it may be an alternative to smoking and so a benefit, not a cost.
5. No sign of a causal progression from vaping to smoking – there is no evidence from any study anywhere in the world of a ‘gateway effect’, despite several quite desperate attempts to suggest it has been found.
6. Most observational data are showing smoking in decline faster where vaping is among adolescents is rising. It is not possible to establish a causal link between

rising vaping and falling youth smoking, but these data are more consistent with the hypothesis that vaping is displacing smoking and diverting young smokers from onset, than with the opposite.

There is nothing in the data or in any of the studies cited in the Explanatory Memorandum that is not explained by the account given above. Some additional discussion of these issues is at these links:

Bates C. Alarmist survey on teenage vaping misses the point – reaction [\[link\]](#)

Bates C. JAMA paper finds some adolescents experiment with stuff [\[link\]](#)

Bates C. We need to talk about the children – the gateway effect explained [\[link\]](#)

### *Question 5*

Do you agree with the proposal to establish a national register of retailers of tobacco and nicotine products?

The government needs a better argument that these administrative burdens will actually lead to an improvement: e.g. a pilot in one local authority. The costs and burdens must be kept to the minimum needed to meet the policy objective and its design should not make it more difficult to stock e-cigarettes than cigarettes.

### *Question 6*

What are your views on creating a new offence for knowingly handing over tobacco and nicotine products to a person under 18, which is the legal age of sale in Wales?

Only for tobacco products. If young people are smoking, it is an advantage for them to be able to access e-cigarettes. Consider the following cases:

- a youth worker wants to persuade kids she's working with to try e-cigarettes rather than smoking.
- a worried father is concerned about his son smoking and has tried and failed to persuade him to quit, but wants to get him over the financial hurdle of buying the initial vaping starter kit.
- a 15 year old girl is pregnant and smoking, and showing no sign of quitting – her pregnancy counsellor wants to introduce her to vaping to try something new to reduce risk to the baby.

In each case someone trying to do the right thing would be guilty of an offence. These examples are to make the point that there is no case for making 'harm reduction' wait until 18, and measures like this do not read over well to the real world where young people do actually smoke below the age of 18 and do harm



themselves as result. The Explanatory Memorandum is written from a highly idealised standpoint in which everyone does as instructed and obeys the law. If Wales wants to have a real-world approach to public health it has to deal with people as they are, not as the government wishes them to be.

**Question 7–18 not answered.**

**Other comments**

### *Question 19*

Do you believe that the issues included in this Bill reflect the priorities for improving public health in Wales?

No the Bill attempts to apply policy and legislation used to control smoking to controlling vaping. There is confusion at the heart of this. The emergence of products with very low risk to health compared to cigarette smoking presents an enormous opportunity for public and the drive towards ending smoking related disease. Instead of thinking that more restriction and regulation must be the right approach in public health, it would be better for Wales to take a more forward-looking approach that goes with the grain of ordinary people's lives. Two examples of a constructive vision are included below:

The Royal College of Physicians explained in its landmark report, Harm reduction in nicotine addiction:

*This report makes the case for harm reduction strategies to protect smokers. It demonstrates that smokers smoke predominantly for nicotine, that nicotine itself is not especially hazardous, and that if nicotine could be provided in a form that is acceptable and effective as a cigarette substitute, millions of lives could be saved.* Royal College of Physicians Harm reduction in nicotine addiction: help people who cannot quit, London 2007 [\[link\]](#)

Derek Yach, the former WHO Director for tobacco policy who led development of the global Framework Convention on Tobacco Control, summarises thus:

*At the moment, it's estimated that there will be a billion tobacco-related deaths before 2100. That is a dreadful prospect. E-cigs and other nicotine-delivery devices such as vaping pipes offer us the chance to reduce that total. All of us*

*involved in tobacco control need to keep that prize in mind as we redouble efforts to make up for 50 years of ignoring the simple reality that smoking kills and nicotine does not.* Yach D. E-cigarettes save lives. Commentary in The Spectator. February 2015 [\[link\]](#)

### *Question 20*

Are there any other areas of public health which you believe require legislation to help improve the health of people in Wales?

### *Question 21*

Are there any other comments you would like to make on any aspect of the Bill?