



PHILIP MORRIS
LIMITED

Philip Morris Limited's Response to the Health and Social Care Committee Call for Evidence on the Public Health (Wales) Bill.

Introduction

Philip Morris Limited ("PML") welcome the opportunity to respond to the Health and Social Care Committee's call for evidence on the general principles of the Public Health (Wales) Bill. Our response is limited to those measures contained in Part 2 of the Bill which are of direct relevance to our business. Last year, Philip Morris International through an affiliate of PML, entered the UK e-cigarette market by acquiring one of the leading UK e-cigarette manufacturers, Nicocigs Limited.

Tobacco Harm Reduction, E-Cigarettes and Reduced Risk Products¹

PML agrees with many public health professionals that e-cigarettes, like other non-combustible products, are likely to be reduced risk alternatives to combustible tobacco cigarettes.² Many smokers will continue to smoke; by switching to less harmful products, such as e-cigarettes, significant individual and public health benefits can be accrued, as acknowledged in the recent Public Health England Report endorsing tobacco harm reduction approaches³. Furthermore, as the US FDA recently stated, there is "*a continuum of nicotine-delivering products that pose differing levels of risk to the individual*" and if certain products are shown to be less harmful, "*they could help reduce the overall death and disease toll from tobacco use at a population level.*"⁴ Thus, e-cigarettes should be regulated in a different manner from cigarettes and other traditional tobacco products.

The Royal College of Physicians Wales (RCP Wales) noted in their White Paper consultation response that "*electronic cigarettes and other novel nicotine devices can provide an effective, affordable, and readily available retail alternative to tobacco. These innovations could make harm reduction a reality for smokers.*"⁵ With such important harm reduction considerations in mind, advancing proportionate regulation must be a firm consideration of the Welsh Government, and this particularly applies to their intention to prohibit the use of 'Nicotine Inhaling Devices' in enclosed public spaces.

We have integrated our answers to the questions raised by the Committee into our analysis of the four chapters contained in Part 2 of the Bill. In addition to the written evidence supplied here, we would appreciate the opportunity to provide oral evidence to the Health and Social Care Committee at a future date.

Chapter 1: Smoking and Use of Nicotine Inhaling Devices

¹ Reduced Risk Products is the term used by Philip Morris International to refer to products with the potential to reduce individual risk and population harm in comparison to smoking combustible cigarettes.

² P. Hayek et al. 'Electronic cigarettes: review of use, content, safety, effects on smokers and potential for harm and benefit'. *Addiction*, 109, 11 (2014), p1801-1810. See: <http://onlinelibrary.wiley.com/doi/10.1111/add.12659/abstract>

³ McNeill A., Brose L. S., Calder R., Hitchman S. C., Hajek P., and McRobbie H., E-cigarettes: an evidence update, A report commissioned by Public Health England, August 2015,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/454516/E-cigarettes_an_evidence_update_A_report_commissioned_by_Public_Health_England.pdf

⁴ US Food and Drug Administration. *Deeming Tobacco Products To Be Subject to the Federal Food, Drug and Cosmetic Act. 21 CFR Parts 1100, 1140 and 1143*. See: <http://www.fda.gov/downloads/TobaccoProducts/GuidanceComplianceRegulatoryInformation/UCM394914.pdf>

⁵ Royal College of Physicians Wales. *Consultation Response to Public Health White Paper* (2014). See:

<http://gov.wales/docs/phhs/consultation/141104phwhitepaperresponses18en.pdf>

Restrictions on Nicotine Inhaling Devices

PML supports evidence-based regulation of tobacco and its alternatives. However, the Welsh Government's decision to proceed with an excessive restriction on the use of Nicotine Inhaling Devices, such as e-cigarettes, disregards the accumulated evidence, as well as the considerable level of opposition from public health organisations and individuals alike.⁶ Restrictions on the use of e-cigarettes in enclosed and public spaces must be evaluated in light of: (a.) the science which shows a clear distinction between cigarette smoke and e-cigarette vapour; (b.) the need to encourage smokers to switch from cigarettes to less risky alternatives; (c.) and the desire not to expose minors to adult products.

We believe the Bill mistakenly treats smoking and the use of e-cigarettes in the same manner. The Welsh Government contend that such an intervention is required to prevent the so-called gateway effect, the re-normalisation of tobacco smoking and to avoid undermining smokefree legislation. However, this rationale does not meet the standard of proportionate evidence-based policy making and is critically undermined by the available data.

Renormalisation and the Gateway Effect

An abundance of recent statistics illustrate that e-cigarettes are used almost exclusively by existing adult smokers who switch from combustible cigarettes, while use among never-smokers is negligible, and there is little evidence that children in Wales are using e-cigarettes regularly.⁷ New data from the ASH Smokefree GB Youth Survey found no evidence of a gateway effect, with only 2.4% of young people stating that they had used e-cigarettes at least once a month in 2015 and that almost all who reported regular use were those who had been or were already smokers. Crucially, with regular smoking among 11-15 year olds now at a historic low of 3%, ASH note that *"an increase in awareness and use of electronic cigarettes was not coinciding with any increase in teen smokers."*⁸

In fact, the Welsh Government acknowledge in the Bill's *Explanatory Memorandum* that at present, few teenagers who experiment with e-cigarettes go onto become regular users.⁹

The lack of evidence on renormalisation and the gateway effect was emphasised by a number of leading public health stakeholders during the White Paper consultation process, including:

- UK Centre for Tobacco and Alcohol Studies (UKCTAS): *"...there is no evidence that use of e-cigarettes, and particularly the use of e-cigarettes in public, is resulting in appreciable gateway uptake of tobacco smoking."*¹⁰
- RCP Wales: *"The RCP is not aware of any evidence that shows electronic cigarettes normalise tobacco smoking in indoor public spaces, or that electronic cigarettes are acting as a gateway to tobacco use in young people."*¹¹

⁶ 79% of responses were opposed to the measure in the public consultation on the proposals last year. BBC Wales. 'E-Cigarette ban in enclosed spaces in Wales pushes ahead', BBC News, 09/06/15. See: <http://www.bbc.co.uk/news/uk-wales-33025872>

⁷ ASH UK. *Use of electronic cigarettes among adults in Great Britain* (2015). See: http://www.ash.org.uk/files/documents/ASH_891.pdf; R. West & J. Brown. *Trends in Electronic Cigarette Use in England* (2015). See: <http://www.smokinginengland.info/latest-statistics>; Office for National Statistics. *Opinions and Lifestyle Survey: Adult Smoking Habits in Great Britain, 2013* (2014). See: http://www.ons.gov.uk/ons/dcp171778_386291.pdf; Health and Social Care Information Centre. *Smoking, Drinking and Drug Use Among Young People in England - 2014* (2015). See: <http://www.hscic.gov.uk/catalogue/PUB17879/smok-drin-drug-youn-peop-eng-2014-rep.pdf>; G. Moore et al. 'Electronic-cigarette use among young people in Wales: evidence from two cross-sectional surveys', *BMJ Open* (2015). See: <http://bmjopen.bmj.com/content/5/4/e007072.full.pdf+html>; ASH Wales. *Young people and e-cigarettes in Wales* (2014). See: http://ashwales.org.uk/assets/factsheets-leaflets/young_people_and_e-cigarettes_in_wales_final_march_2014.pdf

⁸ ASH UK. 'Latest data finds no evidence that electronic cigarettes are a gateway to smoking for young people', 17/08/15. See: <http://www.ash.org.uk/media-room/press-releases/latest-data-finds-no-evidence-that-electronic-cigarettes-are-a-gateway-to-smoking-for-young-people>

⁹ Welsh Government., *Public Health (Wales) Bill: Explanatory Memorandum* (2015), p20. See: <http://www.assembly.wales/laid%20documents/pri-ld10224-em/pri-ld10224-em-e.pdf>

¹⁰ UKCTAS. *Consultation Response to Public Health White Paper* (2014). See: <http://gov.wales/docs/phhs/consultation/141104phwhitepaperresponses21en.pdf>

¹¹ RCP Wales. *Consultation Response*.

- DECIPHer, Cardiff University: “We are not aware of evidence to suggest that the use of e-cigarettes in public places normalises the act of smoking, or evidence supporting the ‘gateway’ hypothesis.”¹²
- Cancer Research UK (CRUK): “We also do not believe that there is sufficient evidence to legislate to prevent e-cigarettes renormalizing smoking.”¹³

Contrary to the view of the Welsh Government that e-cigarettes may re-normalise smoking, the available scientific evidence suggests that e-cigarettes are being used as a means to quit tobacco.¹⁴ Blunt legislative measures to restrict e-cigarette use could have unintended consequences for those seeking to undertake a quit attempt, as e-cigarettes have now become the most popular smoking cessation aid.¹⁵ E-cigarettes have been shown to be as effective as NRT among smokers who have attempted to quit without professional guidance. The recent report of the Behavioural Insights Team of the UK Government concluded its review of the data by stating that “e-cigarettes are now the most successful product at helping people quit smoking, and the evidence shows that almost all users of e-cigarettes are former smokers.”¹⁶

With the growing acceptance of the harm reduction potential of e-cigarettes, the Royal Society for Public Health has called for the greater utilisation of the devices in NHS stop smoking services.¹⁷ In this context, it is telling DECIPHer commented that any ban in Wales “would penalise those who use electronic cigarettes as a smoking cessation aid.”¹⁸ The Welsh Government should therefore view the increased use of e-cigarettes as a means of facilitating their ambitious target to reduce adult smoking prevalence to 16% by 2020, rather than a hindrance.¹⁹

The views expressed by a number of various public health experts are also validated among UK adult smokers and e-cigarette users as measured by a recent nationally representative survey conducted by Populus Limited, a leading opinion research firm, on behalf of PML.²⁰ The initial results send the clear message that smokers and e-cigarette users see the benefit of e-cigarettes and demand the reasonable regulation of these products:

- Three-quarters (76%) agree that “e-cigarettes represent a positive alternative to today’s conventional cigarettes”. Agreement increases among those most familiar with e-cigarettes: current e-cigarette users (89%) and those who switched from conventional cigarettes to e-cigarettes (93%).
- Over eight-in-ten (82%) agree that the Government should enact appropriate regulations to ensure e-cigarettes are not used by minors under 18.

¹² DECIPHer. *Consultation Response to Public Health White Paper* (2014). See:

<http://gov.wales/docs/phhs/consultation/141104phwhitepaperresponses08en.pdf>

¹³ CRUK. *Consultation Response to Public Health White Paper* (2014). See:

<http://gov.wales/docs/phhs/consultation/141104phwhitepaperresponses05en.pdf>

¹⁴ J. Brown et al. ‘Real-World effectiveness of e-cigarettes to aid-smoking cessation: a cross sectional population study’, *Addiction*, 109, 9 (2014), p1531-1540. See: <http://onlinelibrary.wiley.com/doi/10.1111/add.12623/abstract>; H. McRobbie et al. ‘Electronic cigarettes for smoking cessation and reduction’, *Cochrane Database of Systematic Reviews*, 12 (2014). See:

<http://onlinelibrary.wiley.com/doi/10.1002/14651858.CD010216.pub2/pdf>

¹⁵ Recent data has shown a 31% decrease in quit attempts in Scotland using NHS smoking cessation services. The report from NHS Scotland states that the “rise in the use of electronic cigarettes is a plausible explanation” for the fall. NHS Scotland. *NHS Smoking Cessation Services (Scotland): 1 January to 31 December 2014* (2015). See: <https://isdscotland.scot.nhs.uk/Health-Topics/Public-Health/Publications/2015-06-30/2015-06-30-SmokingCessation-Report.pdf?7744997740>

¹⁶ The Behavioural Insights Team Update Report 2013-2015 at p. 12 (July 2015)

¹⁷ Royal Society for Public Health. *Stopping smoking by using other sources of nicotine* (2015). See:

http://www.rsph.org.uk/filemanager/root/site_assets/our_work/position_statements/rsph_smoking_positional_final.pdf

¹⁸ DECIPHer. *Consultation Response*.

¹⁹ Welsh Government. *Tobacco Control Action Plan for Wales* (2012). See:

<http://www.senedd.assembly.wales/documents/s4255/Tobacco%20Control%20Action%20Plan.pdf>

²⁰ Survey on attitudes to e-cigarette regulation carried out by Populus Limited, on behalf of Philip Morris Limited, using a national quota of 1,083 smokers and e-cigarette users aged 18 and above. The survey was executed via the online methodology from 24-28 July 2015 and the national representative sample was drawn from a combination of the Populus Live research panel and Random Online Sampling.

- Three-quarters (78%) believe *“the Government should do all it can to encourage smokers to switch to less harmful alternatives to cigarettes, including lower taxes and less restrictions compared to normal cigarettes”*.

These findings are further reinforced when examining the opinion of those that have fully switched from conventional cigarettes to e-cigarettes:

- Nearly all e-cigarette switchers (92%) agree that *“switching to e-cigarettes has been a positive change”* in their life, with three-quarters (75%) *strongly* agreeing.
- A majority (55%) revealed that they were interested in e-cigarettes as the devices could be used in some indoor public places.
- Significantly, half (53%) agreed that further restricting the use of e-cigarettes in indoor public places would discourage them from switching to these products.

PML encourages the Health and Social Care Committee to carefully consider the views and opinions of smokers and e-cigarette users when discussing the Bill. The full report of the study, as well as all supporting data, will be submitted to the Committee and we would welcome the opportunity to further discuss the research at a future date.

Undermining Smoke-Free Legislation

The Bill will bring the use of e-cigarettes into line with conventional cigarettes in terms of smokefree legislation through a re-statement of Chapter 1, Part 1 of the Health Act in relation to Wales. Equating two fundamentally distinct products in this regard demonstrates a basic misunderstanding of how e-cigarettes operate: e-cigarettes do not generate smoke by burning tobacco and therefore deliver nicotine with far fewer chemicals. Many public experts and organisations have concluded that e-cigarettes are not significantly hazardous either for users or by-standers.²¹

PML concur with CRUK that *“there is no evidence that the use of e-cigarettes in the majority of smokefree premises undermines the enforcement of the smokefree legislation.”*²² Furthermore, UKCTAS maintain it is not the case that e-cigarettes undermine smokefree policies as *“it is in practice easy to distinguish e-cigarettes from tobacco cigarettes”* and that their use in public spaces *“normalises electronic rather than tobacco use.”*²³ Similarly, RCP Wales emphasised there was *“no evidence that smoking e-cigarettes in enclosed public spaces poses a significant risk to other people”* and on the basis of available evidence, *“electronic cigarettes and related products could actually generate significant falls in the prevalence of smoking in the UK, prevent many deaths and episodes of serious illness.”*²⁴

ASH Wales have stressed the practical implications of any ban on the use of e-cigarettes in enclosed public spaces, noting it would *“increase the likelihood that vapers and smokers would effectively be required to share the same spaces. This not only undermines quit attempts but would also expose users of electronic cigarettes to second-hand smoke.”*²⁵

Overall, we would respectfully encourage the Welsh Government to value science-based regulation and avoid jeopardising the public health gains of e-cigarettes by introducing any disproportionate measures – such as the restriction on use in enclosed public spaces or any extension of smokefree environments to include e-cigarettes – which may dissuade adult smokers from choosing these devices. PML believe that

²¹ R. West et al. *Electronic cigarettes: what we know. A report to UK All Party Parliamentary Groups (2015). Updated July 2015.* See: <http://www.smokinginengland.info/downloadfile/?type=report&src=6>; Royal College of Physicians. ‘What you need to know about electronic cigarettes’, 20/03/14. See: <https://www.rcplondon.ac.uk/commentary/what-you-need-know-about-electronic-cigarettes>

²² CRUK. *Consultation Response.*

²³ UKCTAS. *Consultation Response.*

²⁴ RCP Wales. *Consultation Response.*

²⁵ ASH Wales. *Consultation Response to Public Health White Paper (2014).* See: <http://gov.wales/docs/phhs/consultation/141104phwhitepaperresponses01en.pdf>

banning the use of a product that has been proven to be an effective and recognised less harmful alternative for adult smokers would undermine the Welsh Government's own targets on reducing smoking prevalence and would not contribute to improving public health in Wales.

Restrictions on Smoking

The Bill also grants powers to Welsh Government Ministers to designate additional premises, including non-enclosed spaces, as smokefree in relation to tobacco smoking. PML believe that the conclusions of public health officials on the health effects of second-hand smoke warrant restrictions on public place smoking, including bans in many locations. However, a balance must be struck between the desire to protect non-smokers, especially minors, from exposure to second-hand smoke, and allowing the millions of adults who smoke to do so in some public places.

We believe, smoking should be prohibited inside hospitals and health institutions, as well as in schools and other facilities for youth. In addition, smoking should be prohibited in public places where people must go, such as public transportation vehicles and businesses offering general public services (e.g. supermarkets, banks and post offices). In such places, signs should be posted clearly stating that smoking is not permitted. We believe smoking should be allowed in outdoor public spaces, except areas intended primarily for children or where smoking could be dangerous.

As the Committee scrutinises the Bill, it should acknowledge the fact that reduced risk tobacco products are being developed that also produce vapour²⁶. A blanket prohibition on the use of tobacco products, even when no second-hand smoke is emitted by such products, is not consistent with the intent of public smoking restriction legislation and regulation, or the principle of tobacco harm reduction. Please refer to the above section on e-cigarettes.

Chapter 2 Retailers of Tobacco and Nicotine Products & Chapter 3 Prohibition on Sale of Tobacco and Nicotine Products

PML supports comprehensive, evidence-based regulation that helps reduce the harm caused by smoking. Therefore, we endorse the principle of a creation of a tobacco retail register in Wales; however, we oppose the unnecessary and bureaucratic nature of the proposed fee-structure and registration process. We believe the Welsh Government should duplicate the Scottish Government's approach to the Scottish Tobacco Retail Register in making registration free, especially as retailers have had to deal with the impact of the costly tobacco display ban. However, drawing from the Scottish experience, the key issue will be one of enforcement: recent figures show that only five irresponsible retailers have been banned from selling tobacco on a temporary basis since the introduction of the policy in 2011.²⁷ As UKCTAS academics have observed: "*[There is] little evidence that merely enacting a law without sufficient enforcement [has] any impact on youth tobacco use.*"²⁸

Chapter 4: Handing Over Tobacco etc. to Persons Under 18

PML believe that minors should not have access to either tobacco or e-cigarettes and as such we welcome any activity that prevents youth access to these products. That is why we advocated for regulation around proxy purchasing and continue to support educational programmes highlighting the adverse health effects of smoking.

²⁶ <https://www.pmiscience.com/>

²⁷ S. Parsons. 'Was the Scottish tobacco register worth it?' *Retail Express*, 10/08/15. See: <http://www.betterretailing.com/was-the-scottish-tobacco-register-worth-it/>

²⁸ E. Donaghy et al. 'A qualitative study of how young Scottish smokers living in disadvantaged communities get their cigarettes', *Nicotine & Tobacco Research*, 15, 12 (2013), p2053-2059. See: <http://ntr.oxfordjournals.org/content/early/2013/08/02/ntr.ntt095>