



5th August 2015

Jane Williams
Health and Sport Committee
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Dear Ms Williams,

Response to Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill

“The Bill will introduce restrictions on the sale of nicotine vapour products (NVPs) such as e-cigarettes and shisha pipes. These restrictions will include; a minimum purchase age of 18, prohibiting the sale of NVPs via vending machines, requiring NVP retailers to register on the tobacco retailer register, prohibit ‘proxy-purchasing’ for under 18s, restrict domestic advertising and promotions, implement an age verification policy for the sale of NVPs and ban staff under the age of 18 from selling tobacco and NVPs. The Bill would also make it an offence to smoke in parts of hospital grounds.”

Declaration of interest – FOREST (Freedom Organisation for the Right to Enjoy Smoking Tobacco) was founded in 1979 to represent adults who choose to consume tobacco in full knowledge of the health risks associated with tobacco products. We also represent non-smoking adults who are tolerant of other people's enjoyment of tobacco.

FOREST's purpose is to protect the interests of adults who choose to smoke or consume tobacco and highlight the increasingly intrusive nature of government in the lives of private individuals. More recently we have launched a new campaign, Action on Consumer Choice, that represents the interests of consumers who choose to use nicotine vapour products including electronic cigarettes.

FOREST receives donations from British American Tobacco, Imperial Tobacco Limited, Gallaher Limited (part of the Japan Tobacco Group of Companies). However the views expressed in this submission or any Forest-associated website or publication are those of Forest alone.

Our primary interest in this Bill is the intention to “make it an offence to smoke in parts of hospital grounds”. However, as many smokers use e-cigarettes, we have also commented on some of the proposed restrictions on the sale of nicotine vapour products.

1. Smoking in hospital grounds

- 1.1 FOREST understands why the Scottish Government does not want the NHS to appear to encourage or condone smoking. Nevertheless we cannot support that part of the Bill that discriminates against smokers by making it an offence to smoke in hospital grounds.
- 1.2 A comprehensive ban is completely disproportionate to the problem. Some people may not like the smell of tobacco smoke but it is massively diluted in the open air and the level of exposure is likely to be counted in seconds.
- 1.3 When people light up they must of course smoke with consideration for those around them – and move to a quieter, less populated part of the grounds when appropriate – but smoking outside in a wide open space should not inconvenience anyone unduly, if at all.
- 1.4 Significantly there is NO evidence that smoking outside is a health risk to anyone other than the smoker. Interviewed recently on BBC Radio Manchester, Andrea Crossfield, CEO of Tobacco Free Futures (formerly Smokefree North West), stated there is "no risk from second-hand smoke in outdoor areas".
- 1.5 Banning smoking in hospital grounds is particularly cruel. Some patients may be in hospital for weeks or even months. If they are long-term smokers it is wrong not to allow them to smoke anywhere in the grounds. The size and location of hospital grounds can vary enormously so it should be left to individual hospitals to decide on a policy rather than having a national one-size-fits-all measure forced upon them.
- 1.6 A comprehensive ban on smoking on NHS hospital grounds will send quite the wrong message about our 'caring' NHS. There's nothing caring about ordering people to walk several hundred yards before they can light up. It could be dark, late at night, or raining. It will almost certainly be next to a busy main road. Why treat anyone like that, especially people who are already suffering from ill health or are recovering from an accident or serious operation?
- 1.7 It may be unsightly if people are smoking outside the main entrance to a hospital but this is one of many unintended consequences of the workplace smoking ban. Unable to smoke indoors in a separate, well-ventilated smoking room, smokers have to stand outside. Inevitably they choose to stand by entrances and doors where there may be some shelter from the elements.
- 1.8 The answer to this issue is not a total ban on smoking in hospital grounds, forcing smokers off the premises with threats of fines. Options include allowing smokers to light up outside without restriction; allowing smokers to light up away from hospital entrances; or installing a well signposted shelter where patients, visitors and staff can light up in some degree of comfort throughout the year.
- 1.9 Even in these difficult financial times a smoking shelter represents money well spent. After all, what's the alternative? Enforcing an outdoor smoking ban means CCTV cameras, public address systems and tobacco control wardens ordering smokers to "Put that cigarette out!".

- 1.10 Enforcing a smoking ban is a waste of public money and hospital resources.¹ According to a recent national poll by Populus for Forest, tackling smoking was considered the lowest in a list of priorities for the NHS, behind even obesity and alcohol issues. The most important issues were investing in new doctors and nurses, addressing response times at A&E, and improving general waiting times.²
- 1.11 How will a smoking ban on hospital grounds be enforced? Will hospitals use tobacco control wardens and CCTV cameras? Who will monitor the latter? What happens if a smoker refuses to extinguish his or her cigarette? Will he or she be forcibly ejected from the grounds, even if they are a patient? Will the hospital call the police? Have the police nothing better to do? What sort of society makes smoking in the open air a criminal offence?
- 1.12 Managers say the NHS in Scotland, England and Wales spends £2.7 billion a year treating smoking-related health problems. To put this estimate in perspective, smokers throughout the UK contribute over £10 billion annually through tobacco taxation. If you contribute that amount to public funds you don't deserve to be treated in such a cold-hearted manner.
- 1.13 The NHS has a duty of care to protect people's health but that doesn't include the right to nag, cajole or bully smokers to quit. Many smokers are in hospital for reasons that have nothing to do with smoking. Why should they be told they cannot go outside and have a cigarette in the open air?
- 1.14 It's heartless to ban patients or staff from smoking anywhere on hospital grounds. Tobacco is a legal product and many people smoke to relieve stress. A cigarette break at work or while they are in hospital is something many people look forward to. For some patients may be one of the few pleasures they have while in hospital.
- 1.15 Driving the proposal to make smoking in hospital grounds an offence is a degree of bullying that is unacceptable in a tolerant society. People are no longer educated about the health risks of smoking. Today they are patronised, insulted, made to feel like lepers or, worse, threatened with prosecution and fines. The public health industry is engaged in a campaign of creeping prohibition. Banning smoking in the open air, even in hospital grounds, is a step too far.
- 1.16 *Potential consequences of a ban on smoking in hospital grounds*
In June 2007 the Daily Telegraph reported:
- A trainee accountant obsessed with serial killers has been found guilty of murdering a nurse as she took a cigarette break. Cheryl Moss, 33, was stabbed and slashed 72 times as she stood in parkland at the back of St George's hospital, Hornchurch, Essex, in April, last year.³
- 1.17 Although this was a tragic and isolated incident, can we sure it will never happen again? Had it not been for a ban on smoking in the grounds of St George's Hospital, Cheryl Moss would probably be alive today. The NHS has a duty of care to all its patients and staff. Why put anyone at risk unnecessarily by banning smoking across all NHS sites and forcing smokers off the grounds? The risk to patients, visitors and staff may be small but it is a risk nonetheless.

- 1.18 On April 12, 2015, I wrote that I had taken a phone call from the daughter of a 68-year-old woman who had been admitted to an NHS-run psychiatric hospital in Scotland:

Her mother is a smoker, suffers from dementia, and is currently in a psychiatric hospital waiting to be moved to a care home where there's a smoking room. She's been told it could take eight or nine months for a place to become available.

The mother was admitted in January and things were OK until the new rules prohibited her from smoking in the hospital grounds. Before that members of staff were allowed to take her outside so she could light up. Now they've been told they can't and it's not safe for her go out unaccompanied.

According to her daughter her mother is going downhill rapidly. Consultants and nurses are said to be sympathetic but say their hands are tied by the regulations.

When we spoke the daughter was distressed by her mother's predicament and occasionally tearful. I promised her Forest's support and we'll do what we can, but I'm pessimistic. The 'caring' profession is nothing of the sort. All they care about is their wretched no smoking policy that must be obeyed at all cost.

Common sense and decency are sacrificed on the altar of public health. What's happening is inhumane yet no-one is willing to do anything about it.⁴

- 1.19 By all means restrict smoking in the area around entrances to hospitals, but making it an offence to smoke on the entire site is unreasonable and excessive. It is the firmly held opinion of FOREST that banning smoking on the entire site of any NHS hospital, psychiatric or otherwise, is inhumane and demonstrates a staggering lack of empathy for patients, staff and visitors who take pleasure from smoking or find it a comfort in stressful times.
- 1.20 Even worse, perhaps, is the appalling threat to make it an offence for hospital staff to permit others to smoke outside hospital buildings. In theory, this part of the legislation could result in a member of staff, with many years of dedicated service behind them, being prosecuted simply because, with the best of intentions, they turned a blind eye to a patient who wanted to smoke outside, a patient whose immediate well-being could be helped by a quiet smoke in the hospital grounds.
- 1.21 Over the years there have been many anecdotal examples of staff taking patients who want to smoke outside so they can light up. How dreadful if this Bill was to lead to the prosecution of a dedicated doctor or nurse, not to mention the catastrophic impact that may have on their career.

2. Nicotine vapour products

- 2.1 There is no evidence e-cigarettes are harmful (beyond satisfying a desire for nicotine which is no more harmful than caffeine). There is also very little evidence that non-smokers, including children, are using e-cigarettes as a gateway to tobacco.

- 2.2 Vapers are almost exclusively smokers who wish to cut down or quit or are looking for an alternative nicotine delivery system in places where smoking is banned. It therefore makes no sense to unnecessarily restrict their sale or promotion.
- 2.3 *Minimum purchase age of 18*
In our response to the Electronic Cigarettes and Strengthening Tobacco Control in Scotland consultation (January 2015) we agreed that the minimum age of sale for e-cigarette devices be set at 18. Now, eight months later, we're undecided. Existing evidence suggests that e-cigarettes are harmless in comparison to combustible cigarettes. Existing evidence also suggests e-cigarettes are not a gateway to tobacco products. If the primary aim is to discourage children from smoking combustible cigarettes it makes little sense to prohibit the sale of e-cigarettes to teenagers, especially those aged 16 or 17. Setting the minimum age of sale for e-cigarette devices at 16 rather than 18 would set a marker. It would (a) distinguish between two very different nicotine delivery systems; and (b) nudge 16 and 17-year-olds away from a potentially more harmful product.
- 2.4 *Requiring NVP retailers to register on the tobacco retailer register*
Electronic cigarettes do not contain tobacco and using them is not smoking so there is no reason for retailers selling e-cigarettes to register on the Scottish Tobacco Retailers Register. With regard to offences and penalties, while the health risks associated with smoking are well known, there is no evidence of harm to the consumer as a result of using e-cigarettes. It is essential that any penalties take this into account because they must be proportionate to the offence.
- 2.5 *Prohibit 'proxy-purchasing' for under 18s*
FOREST supports a ban on the proxy-purchasing of cigarettes and other combustible tobacco products. However we do not support a ban on the proxy-purchasing of e-cigarettes, especially for those aged 16 or 17. If, for example, a parent discovers his or her child is smoking combustible cigarettes, why should they be prosecuted for purchasing an e-cigarette for their child in the hope they will switch from smoking to vaping? The Bill as it stands could result in the prosecution of parents who are only trying to do their best for their child. There is no evidence that by proxy-purchasing an e-cigarette for a 16 or 17-year-old child they are putting that child's health at risk, nor is there evidence that vaping will lead to smoking.
- 2.6 *Implement an age verification policy for the sale of NVPs*
In the eyes of the law it is generally accepted that children are adults from the age of 18. Despite this it is legal to have sex at 16, join the army and drive a car at 17. In Scotland children can also vote at 16. Given this, we believe that setting age verification for the sale of e-cigarettes to 25 is excessive and unnecessary; 21 is a more reasonable age. After all, why place unnecessary restrictions in the way of purchasing or selling a product that evidence suggests is significantly less harmful than combustible cigarettes?
- 2.7 *Ban staff under the age of 18 from selling tobacco and NVPs*
We accept there may be a case to prohibit staff under the age of 18 from selling combustible tobacco products but why ban staff under the age of 18 from selling e-cigarettes? If the Scottish Government genuinely believes in sensible harm reduction policies it would seek to distinguish between potentially harmful combustible tobacco products and e-cigarettes. Any sensible government would seek to nudge

smokers towards a less harmful alternative to combustible tobacco. Putting unnecessary obstacles in the way of people (predominantly smokers) purchasing e-cigarettes doesn't make sense.

2.8 *Restrict domestic advertising and promotions*

Excessive regulation on advertising and promotion will compromise the ability of businesses to market and sell a product that could have a significant impact on public health if it helps smokers switch from combustible products to electronic cigarettes and other harm reduction NVP products that have yet to be invented. This in turn will have an impact on those consumers who wish to quit smoking and want to use a product that mimics the act of smoking without burning tobacco.

- 2.9** 'New rules on the advertising of e-cigarettes', a joint regulatory statement by the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) came into force on 10 November 2014. "The rules add to those already in place, which ensure advertisements for e-cigarettes must not mislead, harm, offend or otherwise be socially irresponsible." Enforcement of the rules is a matter for the Advertising Standards Authority. We believe the Scottish Government should be guided by the new rules and should wait until B/CAP has conducted a formal review of the effect of the rules (after November 2015) before implementing its own legislation on this issue.

2.10 *Prohibiting the sale of NVPs via vending machines*

Given the lack of evidence that the use of electronic cigarettes is harmful to the user, and the significant uptake in vaping among smokers, many of whom are using the product in an attempt to cut down or quit smoking, it would be counterproductive to the stated aims of tobacco control to restrict the purchase of e-cigarettes. We therefore oppose the prohibition of the sale of e-cigarettes in vending machines.

3.0 **Conclusion**

- 3.1** In the past decade in Scotland smoking has been banned in all enclosed 'public' places, including every pub and private members' club in the country. Graphic health warnings have been introduced on cigarette packets. Tobacco vending machines and the display of tobacco in shops have been prohibited.
- 3.2** Next year the UK will introduce standardized packaging of tobacco. At the same time the EU's revised Tobacco Products Directive will be enforced, meaning larger health warnings on cigarette packs. Enough is enough. Adult smokers know the health risks of smoking. If a smoker lights up in the open air, in hospital grounds or anywhere else, he or she is not endangering anyone else's health apart, perhaps, from their own.
- 3.3** Hospitals can be stressful places at the best of times. Prohibiting smoking in hospital grounds is excessive and will be almost impossible to enforce without spending a considerable sum of public money.^{5, 6}
- 3.4** FOREST supports consumer choice and evidence-based policy. To restrict unduly the sale and marketing of e-cigarettes in the unsubstantiated belief that the use of e-cigarettes 'normalises' smoking is self-defeating and immature. It ignores the significant fact that the success of e-cigarettes compared to other smoking cessation

aids is due largely to the fact that vaping mimics the physical act of smoking. This is crucial because it's the principal reason why many smokers find electronic cigarettes a more effective and appealing smoking cessation aid than nicotine patches or other forms of nicotine therapy. Without that USP it's highly unlikely that e-cigarettes would have been so popular so quickly.

- 3.5 Most vapers are existing or ex-smokers, many of whom are using the products as a means to quit smoking. If the Scottish Government is genuinely interested in harm reduction it would encourage more smokers to switch to e-cigarettes. Excessive regulations on advertising and promotion will undoubtedly stop or reduce the rate at which that is currently happening. The inability to effectively market their products will also impact on the development by manufacturers of new and better e-cigarettes in the future.
- 3.6 The e-cigarette is a market-led product that has the potential to revolutionise public health if it is not strangled in its infancy by hyper-regulation and unnecessary restrictions. Based on existing evidence there is no reason to believe that e-cigarettes are a serious risk to the health of the consumer or that vaping is a gateway to smoking tobacco.
- 3.7 Politicians must overcome their unwarranted fear of nicotine (which can be addictive but is no more harmful than caffeine) and embrace the potential that electronic cigarettes have to become a game-changing harm reduction product that could eventually wean millions of smokers off cigarettes and encourage fewer teenagers to start smoking. To do that requires a leap of imagination and the ability to reject unnecessarily restrictive legislation.

Yours sincerely,

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References

¹ [Group says enforcing smoke-free zones at hospitals would be a 'complete waste of money'](#), The Courier, April 21, 2015

² [Poll: Public believe tackling obesity and alcohol abuse more important than further anti-smoking measures](#), June 9, 2015

³ [Loner guilty of stabbing nurse 72 times](#), Daily Telegraph, June 28, 2007

⁴ [Commonsense and decency sacrificed on the altar of public health](#), Taking Liberties blog, April 12, 2015

⁵ [Hospitals' cigarettes ban goes up in smoke](#), The Courier, April 20, 2015

⁶ [Hospitals bring in more staff to tackle smoking](#), Edinburgh Evening News, April 8, 2015