



Department  
of Health

# Equality Analysis

Age of Sale for Nicotine Inhaling Products  
(electronic cigarettes)

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## 1. Introduction

- 1.1. This Equality Analysis examines the potential impact of proposed regulations to introduce a minimum age of sale of 18 for nicotine inhaling products such as electronic cigarettes, as well as refill cartridges and nicotine-containing refill liquids. It updates the analysis prepared to accompany the consultation on the age of sale for nicotine products and has informed post-consultation decision-making. The regulations and this Equality Analysis apply to England and Wales.
- 1.2. This Equality Analysis considers the likely impact of this policy on all the relevant equality characteristics under the public sector equality duty set out in the Equality Act 2010. This document also considers issues relevant to the Secretary of State's duty to have regard to the need to reduce inequalities between the people of England with respect to the benefits that they can obtain from the health service under section 1C NHS Act 2006 (as inserted by s.4 Health and Social Care Act 2012).
- 1.3. The public sector equality duty relates to the following protected characteristics:
  - age
  - disability
  - race (including ethnic origin, nationality and colour)
  - religion or belief
  - sex and sexual orientation
  - gender reassignment
  - pregnancy and maternity
- 1.4. The general Equality Duty contained in the Equality Act 2010 has three aims. It requires public bodies to have ***due regard*** to the need to:
  - **Eliminate unlawful discrimination**, harassment, victimisation and any other conducts prohibited by the Act.
  - **Advance equality of opportunity** between people who share a protected characteristic and people who do not share it; and
  - **Foster good relations** between people who share a protected characteristic and people who do not share it.
- 1.5. During the passage of the Children and Families Bill, a number of regulation-making powers were introduced with the intention of protecting children and young people from the risk of nicotine addiction and the health harms caused by tobacco use and exposure to secondhand smoke. The Children and Families Act received Royal Assent in March 2014 and Section 92 of the Act provides the Secretary of State for Health with powers to make regulations prohibiting the sale of nicotine products to people aged under 18 years. The Department of Health has now consulted on the draft regulations and this document forms part of the Government's consideration of the responses to that public consultation.

## 2. Policy Intention & Background

- 2.1. During the last decade the global market for electronic cigarettes (known as e-cigarettes) has developed rapidly. E-cigarettes have become increasingly popular, with new and novel products continuing to emerge onto the market. A wide range of different types and brands of e-cigarettes are now available and they can be purchased in a variety of settings. E-cigarettes are sometimes designed to look and feel like conventional cigarettes. Other products, often called vaporisers, have a tank or reservoir which the user fills with liquid nicotine of their choice. E-cigarette products are generally marketed as cheaper and healthier alternatives to conventional tobacco cigarettes and for use in places where smoking is not permitted since they produce vapour and not smoke. An estimated 2.1 million adults in Great Britain currently use electronic cigarettes – up from an estimated 700,000 users in 2012.<sup>1</sup>
- 2.2. E-cigarettes are a means of delivering nicotine to the user. They are regarded by some in the public health community as a safer alternative to cigarettes for smokers who are unable or unwilling to stop using nicotine, although a range of concerns have also been expressed. It has long been established that nicotine is highly addictive; in 1988 the Surgeon General of the United States concluded that nicotine ‘is as addictive as heroin or cocaine’.
- 2.3. While use of e-cigarettes by people under age of 18 is presently limited, there is evidence to suggest that it is plausible that usage of these products by young people could increase. Awareness of e-cigarettes is now high amongst children and young people in the UK – a recent study in Wales found that over two-thirds of Welsh children have heard of e-cigarettes<sup>2</sup>. In a study conducted among young people in Cheshire and Merseyside, all children had heard of e-cigarettes or knew what they were.<sup>3</sup>
- 2.4. The marketing and promotion of e-cigarettes is likely to be a key reason why awareness of these products is increasing amongst young people. E-cigarettes are now widely available and are often prominently displayed in a variety of different shops ranging from local newsagents and convenience stores to large supermarkets and pharmacies. The market is competitive and e-cigarette companies are investing heavily in marketing and promotion. Advertisements for e-cigarettes have appeared on television and products are marketed through social media such as Twitter and on YouTube. This level of advertising and promotion is a cause of concern for some, including the Faculty of Public Health.
- 2.5. Whilst the Government acknowledges that responsible e-cigarette manufacturers will not seek to specifically market their products to children, we believe advertising and promotion that is designed for the young adults market (i.e. 18-24 year olds), may also resonate with younger teenagers. A Cancer Research UK report examined the marketing of e-cigarettes and found that ‘independent e-cigarette companies appear to be actively targeting younger non-smokers or social smokers and promoting the e-cigarette as lifestyle products’.<sup>4</sup> In addition, the research conducted in Cheshire and Merseyside found that although some older adolescents appeared to associate e-cigarette use with smoking cessation, generally young people viewed e-cigarettes as a product in their own right, suggesting that many young people initially use them simply for the sake of it, for fun, or simply to try something new.

- 2.6. Nicotine is a highly addictive substance. It is a potent and powerfully addictive drug, which is five to ten times more potent than cocaine or morphine in producing behavioural and psychic effects associated with addiction potential in humans.<sup>5</sup> Electronic cigarettes that contain nicotine therefore carry a significant risk of causing nicotine addiction. There is currently not sufficient evidence to rule out e-cigarettes acting as a gateway into smoking tobacco for children. Currently, most e-cigarette use by children is strongly linked with tobacco smoking, and those children who smoke are more likely to also use e-cigarettes. Whilst much evidence from the UK suggests regular use by children who have never smoked (or have only tried smoking once) is rare, recent research among 10-11 year olds in Wales found that most children who had reported that they had used an e-cigarette had never smoked a tobacco cigarette.<sup>2</sup> E-cigarettes are a relatively new product and there is currently no definitive evidence to indicate whether or not e-cigarettes are having a “gateway effect” into tobacco smoking for children and young people.
- 2.7. E-cigarette vapour is less irritating than tobacco smoke, making it easier for young and inexperienced smokers to inhale. Flavourings can also make the experience of using e-cigarettes more pleasurable for novice users compared to smoking tobacco. In the Chief Medical Officer’s 2012 Annual Report, she ‘raises concern that there may be young people for whom e-cigarettes could be an entry point to use of conventional tobacco products, including cigarettes’.<sup>6</sup>
- 2.8. We know that most children and young people who currently use e-cigarettes also use tobacco (“dual users”). However, it is possible that could change as awareness and availability of the products increases. However, there is emerging evidence to suggest that children who do not smoke tobacco are willing to experiment with e-cigarettes. For example, research published recently by the Welsh Government<sup>2</sup> provides tentative evidence that e-cigarette use appears to represent a new form of childhood experimentation with nicotine, which is more prevalent among 10-11 year olds than smoking. Further research is needed to answer the gateway question definitively, and it will be some time before definitive evidence is available either way.
- 2.9. Whilst e-cigarettes do not currently deliver nicotine as efficiently as cigarettes<sup>7</sup>, this will undoubtedly improve over time. The potential for these products to cause addiction remains high. The European Commission says that:
- ‘E-cigarettes simulate smoking behaviour and can lead to further experimentation with other nicotine-containing products. Recent studies suggest that e-cigarettes are increasingly used by non-smokers and young people. For example, a French study of 2013 revealed that the number of Parisian students experimenting with e-cigarettes has doubled in one year reaching 18%’.*<sup>8</sup>
- 2.10. A study of 40,000 young people in the US found that e-cigarette use among middle and high school children doubled between 2011 and 2012, from 3.1% to 6.5%. The research found that dual use of e-cigarettes and tobacco was high amongst adolescents. While the study was not able to identify whether most youths are initiating smoking with conventional cigarettes and then moving on to (usually dual use of) e-cigarettes or vice versa, it suggested that e-cigarettes do not discourage the use of conventional cigarettes.

The research concluded that ‘e-cigarettes may contribute to nicotine addiction and are unlikely to discourage conventional cigarette smoking among youths’.<sup>9</sup>

- 2.11. As noted earlier, there is no definitive evidence currently available to indicate whether or not e-cigarettes are acting as a “gateway” to tobacco smoking in children and young people. However, we can say with certainty that nicotine is a potent pharmacological agent and is highly addictive. We also do not know about the effect of inhaling vaporised nicotine on the developing lungs of young people. The Government is not currently aware of any long-term studies that suggest the use of e-cigarettes is safe, particularly for young people. Whilst e-cigarettes do not currently deliver nicotine as efficiently as cigarettes, the potential for these products to cause nicotine addiction remains high.
- 2.12. The Government has legitimate concerns about young people becoming addicted to any substance before they are able to make informed, adult decisions. That is why the Government believes it is sensible and proportionate to restrict sales of e-cigarettes and related products to those aged 18 and over. A minimum age of sale for e-cigarettes also achieves consistency with other age restricted products, such as alcohol and tobacco, and this was supported by retailers, their representative bodies, and manufacturers in responses to the consultation.
- 2.13. The Government also has a duty to protect children and young people from the risk of harm. For the reasons explained above, the Government took a decision to consult on regulations to limit the sales of e-cigarettes, their component parts, including e-liquids containing nicotine, to people aged over 18. Notwithstanding the debate on whether e-cigarettes can lead to tobacco use, e-cigarette liquids are highly toxic and the number of people – including young children – poisoned by swallowing e-cigarette liquids containing nicotine rose sharply in the UK last year.<sup>10</sup>
- 2.14. The new EU Tobacco Products Directive, which the Government will transpose into UK law by May 2016, includes requirements on the enhanced safety and quality of e-cigarettes (and related products). Despite these new consumer safeguards, age of sale controls are not included in the Directive. Member States were, therefore, encouraged to take action domestically on this issue. The Government, therefore, acted to include regulation-making powers on age of sale for nicotine inhaling products in the Children and Families Act 2014.
- 2.15. Finally, where medical or therapeutic claims are made by e-cigarette companies, for example any product which claims or implies that it can treat nicotine addiction is considered to be a medicinal product and must be licensed for use under medicines legislation (administered by the Medicines and Healthcare Products Regulatory Agency). E-cigarettes that are licensed as a medicine, for example as a smoking cessation device, can still be made available to children under the age of 18 under medical supervision – e.g. by way of prescription.
- 2.16. Powers to make regulations prohibiting the sale of nicotine products to people aged under 18 years are provided under section 92 Children and Families Act 2014. The draft regulations subject to this consultation also include at regulation 2(1), provision to create an offence for an adult to buy, or attempt to buy, a relevant nicotine product on behalf of anyone under 18 (known as proxy purchasing). This would bring the purchase of nicotine

products in line with equivalent offences for the proxy purchase of tobacco and alcohol on behalf of under 18s. It is part of wider Government efforts to reduce the availability of tobacco and e-cigarettes to children and young people.

- 2.17. Full consideration has now been given to all consultation responses and, subject to available Parliamentary time, Health Ministers expect to bring forward final regulations with the intention that the regulations would come into effect in 2015.
- 2.18. An Impact Assessment of this policy sets out the detailed rationale for intervention and the intended effects. It also estimates the total costs to business of eliminating all sales to under 18s from the existing e-cigarette market.

### 3. Analysis of the impact on equality

- 3.1. This analysis identifies some equality issues that have been taken into account in developing the policy. However, it is important to note that electronic cigarettes are a relatively new product and the market is still evolving. New and novel products are coming onto the market all the time and the health risks and benefits of electronic cigarettes remain uncertain. The current body of research on e-cigarette use in the UK does not provide direct insight into the impact that introducing an age of sale could have on different socio-economic groups or many of the groups with protected characteristics under the Equality Act 2010. Within the EU, Croatia, Slovakia, Spain, Italy and Latvia have set age of sale requirements for e-cigarettes. However, any age of sale requirements that have been introduced worldwide, have only been in place for a relatively short time and have not therefore been evaluated.
- 3.2. Prohibition of the sale of nicotine products to under 18s, or their purchase on behalf of under 18s, would apply universally. It is difficult to predict with any accuracy what the impact of these restrictions might be in terms of equalities but possible areas for consideration have been set out below, in line with the Public Sector Equality Duty. This requires that policy makers have due regard to potential positive and negative impacts on protected groups and due regard to the need to eliminate discrimination, harassment, victimisation, advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share, and foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The analysis below explores the potential positive and negative impacts that the policy might be expected to have when implemented.

### 4. Age

- 4.1. The proposed regulations are intended to protect new generations of children and young people from the risk of nicotine addiction and possible tobacco use. The policy treats those under 18 differently from adults on the grounds of promoting good public health. The Government believes this policy is justified to protect the health of under 18s by reducing the likelihood of addiction to nicotine. There is evidence to show that the use of nicotine in adolescence can alter brain development.<sup>11</sup> As explained in the Impact Assessment, not only is nicotine highly addictive, evidence shows that young people can develop nicotine dependence very rapidly and addiction to smoking tobacco is largely

acquired in childhood and adolescence. In England, almost two-thirds of current and ex-smokers say that they started smoking regularly before they were 18 years old, with 39 per cent saying that they were smoking regularly before the age of 16.<sup>12</sup>

- 4.2. In addition, while the use of these products by children is currently limited, international evidence suggests that usage may increase. The Government therefore believes it is right to act now to mitigate this risk especially as awareness of e-cigarettes among children is becoming widespread in the UK.
- 4.3. In terms of the positive impact, preventing the sale of electronic cigarettes (and related products) to children and young people under 18 will contribute to the reduction in risk of young people becoming addicted to nicotine. If the policy is successful in reducing the availability of e-cigarettes to those aged under 18, it should minimise the risk of e-cigarettes acting as a gateway into tobacco use (although it is acknowledged that further research is needed to answer this question definitively).
- 4.4. It is also worth noting here that the Government recognises the important role played by retailers in enforcing age of sale restrictions across a whole range of products. Many responsible manufacturers and retailers of e-cigarettes already voluntarily prevent children from accessing e-cigarettes. However, some do not. Age of sale restrictions that are consistent with the sale of tobacco will provide clarity and help retailers in the operation of their business. This view has been supported by the National Association of Retail Newsagents and the Association of Convenience Stores in their responses to the consultation.
- 4.5. In terms of the potential negative impact, the Government recognises that there are some existing users of e-cigarettes aged under 18 who currently have ready access e-cigarette products where retailers choose not to impose a voluntary age of sale restriction. When the minimum age of sale is introduced, a child who wishes to access e-cigarettes in order to reduce their tobacco use or to help them quit completely, will not be able to purchase e-cigarette products unless they are licenced as medicines. The Government has acknowledged the potential of e-cigarettes (and other inhaled nicotine products) to aid smoking reduction and cessation and has taken action to mitigate this risk. The draft age of sale regulations, therefore, exempt any nicotine inhaling devices that are medicines under certain circumstances – for example, if they are sold in accordance with a valid prescription by a pharmacist, or in other exceptional circumstances under which prescription only medicines could be sold. The regulations also exempt any nicotine inhaling products which that are authorised medicines with a general sale licence (GSL) which specifies that they are indicated for people under 18.
- 4.6. This means that a child under 18 trying to quit or reduce smoking would continue to be able to access e-cigarettes that are licenced as medicines under the supervision of their doctor. These proposals have no impact on non-inhaled forms of nicotine replacement therapies (NRT) such as patches and gums, therefore under 18s could access them as they do now.
- 4.7. On balance, the Government believes that these age of sale measures are both necessary and proportionate and that the evidence justifies differential treatment on the grounds of age. If the policy objectives relating to the age of sale and proxy purchasing



regulations were to be achieved, the positive benefits would fall exclusively on children and young people under the age of 18. We therefore consider that there would not be any unlawful discrimination arising on the grounds of age. Other potential impacts on protected groups are set out below.

## 5. Race and ethnicity

- 5.1. One of the most common retail outlets for e-cigarettes is small, independent shops such as newsagents or convenience stores. A number of responses to the 2012 Consultation on standardised packaging of tobacco products noted that a number of smaller retail businesses are owned or run by proprietors of black or minority ethnicity. The Government believes that applying the age of sale provisions for nicotine products will not be burdensome for small retailers who are familiar with applying age of sale restrictions on a whole range of products. There is a possibility that some retailers would see a small reduction in profits if the policy was successful in eliminating all children and young people from the electronic cigarette market. However, our assumption is that most responsible retailers already restrict the sale of these products to children and young people so our assessment is that impact will be minimal. Given that some of the retail outlets affected by this policy are owned and/or run by proprietors from BME groups, these groups may be affected by this policy. We consider that any such potential impact is justified on the grounds of protecting the health and wellbeing of children and young people.
- 5.2. An Impact Assessment which accompanies this document provides an in-depth assessment of the impact of this policy on business.

## 6. Gender

- 6.1. There is little available evidence that compares electronic cigarette use by gender. While in the past more men than women smoked tobacco, today the prevalence of smoking is about the same for men and women. A study of e-cigarette use amongst young people aged 13-17 in the Cheshire and Merseyside areas by the Centre for Public Health at Liverpool John Moores University was published in March 2014. One in eight (12.7%) young people under 18 reported having accessed e-cigarettes. There were no significant differences in access to e-cigarettes by gender or level of deprivation (socio-economic group). A study of e-cigarette use amongst young people aged 13-18 in Wales found that reported regular e-cigarette use (more than once a week) was slightly higher amongst males (9.2%) compared to females (2.3%). However, the study acknowledges limitations of the findings, as respondents were self-selecting. It is reasonable to assume that this policy will have no disproportionate impact – positive or negative – on the basis of gender.

## 7. Disability

- 7.1. There is no evidence available regarding e-cigarette use and disability. Using tobacco as a proxy, we know that tobacco use is much higher amongst people with mental health problems. Smoking rates by young people with mental health problems are significantly higher than average. Evidence for e-cigarettes is not available so it is not possible to assess if there would be any disproportionate impact – positive or negative – on disabled people.

7.2. In response to the consultation, the Royal College of Psychiatrists raised concerns over the reduced life expectancy of people with serious mental illness, recommending that this be included in the Impact Assessment. Whilst there is currently limited information on e-cigarette usage amongst this group, we will keep emerging evidence under review.

## 8. Sexual Orientation

8.1. Whilst smoking rates are higher among lesbian, gay, bisexual and transgender (LGBT) groups, no comparable data is yet available for the use of electronic cigarettes and related products. It is not possible, therefore, to make any considered assessment of the impact of this policy on those groups. We will keep emerging evidence under review.

## 9. Pregnant Women

9.1. If this policy is successful in reducing the risk of e-cigarettes acting as a gateway for young people to smoke tobacco, this would have a benefit in those groups where there are high rates of smoking in pregnancy in under 18s. We know little about the long-term effects of using e-cigarettes on the developing lungs of young people and even less about the effect of e-cigarette use on unborn babies. However, they might be a safer alternative to smoking tobacco and could have a role to play in smoking cessation or reduction. A young pregnant woman aged under 18 who smoked could still have access to e-cigarettes as a smoking cessation tool on prescription, and to be used under medical supervision.

## 10. Health Inequalities

10.1. Rates of smoking tobacco vary considerably between different social groups. Smoking is most common among people who earn the least and least common among those who earn the most. In recent times smoking has become one of the most significant causes of inequalities in health between socio-economic groups. However, the limited data available suggests that there is not the same variation by socio-economic group in use of e-cigarettes by young people. Whilst e-cigarette use by children has previously been strongly associated with tobacco use, there is tentative evidence from Wales of childhood experimentation with nicotine, which is more prevalent among 10-11 year olds than experimentation with tobacco.<sup>2</sup> We are not, therefore, able to make robust assumptions about e-cigarette use by socio-economic group based upon smoking prevalence in these groups.

10.2. We consider that the policy has the potential to reduce health inequalities over time. If the policy is successful in reducing the risk that electronic cigarette use encourages the smoking of tobacco, there would be a greater impact on those groups in which smoking prevalence is highest which could make a modest contribution to a reduction in health inequalities between socio-economic groups.

10.3. A number of respondents to the consultation noted that e-cigarettes had the potential to reduce the potential for long-term health inequalities by helping young people to reduce their tobacco use or to quit smoking completely.

## 11. Other Groups

- 11.1. Based on the limited evidence available, no effects of this policy have been identified for other groups, including for different religions or beliefs (or non-beliefs), for those undergoing gender reassignment or for carers. The Government will continue to review the evidence relating to these groups as it emerges.

## 12. Engagement and Involvement

- 12.1. The draft regulations were subject to a 6 week consultation from 17 December 2014 to 28 January 2015. Responses were received from a variety of interested groups, including retailers, the e-cigarette industry, public health groups and the general public who provided views on this policy. The consultation specifically asked whether the draft regulations on age of sale for nicotine products would contribute to reducing health inequalities and/or help the Government fulfil its duties under the Equality Act 2010.

## 13. Conclusion

- 13.1. Having considered the consultation responses to this policy in the context of the Public Sector Equality Duty, the conclusion of this Equality Analysis is that this policy will have no significant disproportionate impact – positive or negative – on protected groups, other than on grounds of age. The consultation responses to this issue supported the view that differential treatment on the basis of age is proportionate and justified on the grounds of promoting public health. The Government wishes to safeguard the health and wellbeing of children and young people by taking steps to protect them against the risk of nicotine addiction (and possible tobacco use later in life).
- 13.2. This policy, if successful in achieving the aim of restricting the availability of electronic cigarettes (and related products), will reduce the availability of these products amongst under 18s and limit the scope for young people to experiment with e-cigarettes. This is particularly important in relation to young non-smokers who could become addicted to nicotine and go on to smoke tobacco. Much current evidence suggests that current use of e-cigarettes amongst children and young people is largely by current or ex-smokers, however, recent research among 10-11 year olds in Wales found that most children who had reported that they had used an e-cigarette had never smoked a tobacco cigarette. Use by young people could increase as awareness and availability of the e-cigarette products increases.
- 13.3. We do not consider that there is any unlawful discrimination arising from this policy regarding those with protected characteristics. If any detriment were to arise, we believe this can be objectively justified on the grounds of protecting public health.
- 13.4. We have also considered the need to foster good relations between those who share a protected characteristic and persons who do not share it, and are not aware of any evidence on the potential effects of introducing a minimum age of sale for e-cigarettes on such relations.
- 13.5. We have also had regard to the need to advance equality of opportunity between persons who share a protected characteristic and those who do not share it. Having had due

regard to the available evidence and the information submitted during consultation, our conclusion is that this policy advances equality of opportunity in that it has a potential for positive impact on the long-term health and wellbeing of children and young people by minimising the risk of them becoming addicted to nicotine. The policy therefore has the potential to bring about long term health gains and to advance equality of opportunity through differential treatment on grounds of age.

13.6. Overall, our assessment of the impact on equality of this measure is that the policy would not lead to any unlawful discrimination, harassment or victimisation on grounds of age, disability, race (including ethnic origin, nationality & colour), religion or belief, sex and sexual orientation, gender reassignment or pregnancy and maternity. The policy *may* reduce health inequalities.

13.7. Responses to the consultation have confirmed that further research is needed to answer the gateway question definitively and to understand the impact of e-cigarettes on health and culture. Therefore, we commit to keep the emerging evidence under review.

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