

## **CONSULTATION QUESTIONS**

### **Age restriction for e-cigarettes**

**1. Should the minimum age of sale for e-cigarette devices, refills (e-liquids) be set at 18?**

Yes ☒ No ☐

**2. Should age of sale regulations apply to:**

**a. only e-cigarette devices and refills (e-liquids) that contain nicotine or are capable of containing nicotine, or**

**b. all devices / refills (e-liquids) regardless of whether they contain or are capable of containing nicotine?**

a ☐ b ☒

**3. Whom should the offence apply to:**

**a. the retailer selling the e-cigarette**

a ☐

**b. the young person attempting to purchase the e-cigarette**

b ☐

**c. both**

c ☒

**4. Should sales of e-cigarettes devices and refills (e-liquids) from self-service vending machines be banned?**

Yes ☒ No ☐

**5. Should a restriction be in place for other e-cigarette accessories?**

Yes ☐ No ☒N

6. If you answered “yes” to question 5, which products should have restrictions applied to them?

N/A

**Proxy purchase for e-cigarettes**

7. Should the Scottish Government introduce legislation to make it an offence to proxy purchase e-cigarettes?

Yes ☒ No ☐

**Domestic advertising and promotion of e-cigarettes**

8. Should young people and adult non-smokers be protected from any form of advertising and promotion of e-cigarettes?

Yes ☐ No ☐

Neither yes or no – see extended response

9. In addition to the regulations that will be introduced by the Tobacco Products Directive do you believe that the Scottish Government should take further steps to regulate domestic advertising and promotion of e-cigarettes?

Yes ☒ No ☐

10. If you believe that regulations are required, what types of domestic advertising and promotion should be regulated?

- |  |                                       |
|--|---------------------------------------|
| a. Bill boards   | a <input checked="" type="checkbox"/> |
| b. Leafleting  | b <input checked="" type="checkbox"/> |
| c. Brand-stretching (the process of using an existing brand name for new products or services that may not seem related) | c <input checked="" type="checkbox"/> |
| d. Free distribution (marketing a product by giving it away free)  | d <input checked="" type="checkbox"/> |
| e. Nominal pricing (marketing a product by selling at a low price)   | e <input checked="" type="checkbox"/> |
| f. Point of sale advertising (advertising for products and services at the places where they were bought)                | f <input checked="" type="checkbox"/> |
| g. Events sponsorship with a domestic setting  | g <input checked="" type="checkbox"/> |

11. If you believe that domestic advertising and promotion should be regulated, what, if any, exemptions should apply?

See extended response

**12. Are you aware of any information or evidence that you think the Scottish Government should consider in relation to regulating domestic advertising in relation to impacts on children and adults (including smokers and non-smokers)?**

See extended response

**13. Are you aware of any information or evidence that you think the Scottish Government should consider in relation to regulating domestic advertising in relation to impacts on business, including retailers, distributors and manufacturers?**

Comments

**Inclusion of electronic cigarettes on the Scottish Tobacco Retailer Register**

**14. Do you agree that retailers selling e-cigarettes and refills should be required to register on the Scottish Tobacco Retailers Register?**

Yes ☐ No ☒

See extended response

**15. Do you agree that the offences and penalties should reflect those already in place for the Scottish Tobacco Retailers Register?**

Yes ☐ No ☐

Neither yes or no – see extended response

**16. If you answered ‘no’, to question 15, what offences and penalties should be applied?**

See extended response

**E-cigarettes – use in enclosed public spaces**

**17. Do you believe that the Scottish Government should take action on the use of e-cigarettes in enclosed public spaces?**

Yes ☐ No ☒

**18. If you answered 'yes' to Question 17, what action do you think the Scottish Government should take and what are your reasons for this?**

**19. If you answered, 'no' to Question 17, please give reasons for your answer.**

See extended response

**20. Are you aware of any evidence, relevant to the used of e-cigarettes in enclosed spaces, that you think the Scottish Government should consider?**

See extended response

**Smoking in cars carrying children aged under 18**

As an e-cigarette manufacturer, it would be inappropriate for us to comment on tobacco-specific matters, since our products contain no tobacco and consequently belong to an entirely different product category. We have therefore left questions 21-37 blank.

**21. Do you agree that it should be an offence for an adult to smoke in a vehicle carrying someone under the age of 18?**

Yes ☐ No ☐

**22. Do you agree that the offence should only apply to adults aged 18 and over?**

Yes ☐ No ☐

**23. If you answered 'no' to Question 22, to whom should the offence apply?**

Comments

**24. Do you agree that Police Scotland should enforce this measure?**

Yes ☐ No ☐

**25. If you answered 'no' to Question 24, who should be responsible for enforcing this measure?**

Comments

**26. Do you agree that there should be an exemption for vehicles which are also people's homes?**

Yes ☐ No ☐

**27. If you think there are other categories of vehicle which should be exempted, please specify these?**

Comments

**28. If you believe that a defence should be permitted, what would a reasonable defence be?**

Comments

**Smoke-free (tobacco) NHS grounds**

**29. Should national legislation be introduced to make it an offence to smoke or allow smoking on NHS grounds?**

Yes ☐ No ☐

**30. If you support national legislation to make it an offence to smoke on NHS grounds, where should this apply?**

- a. All NHS grounds (including NHS offices, dentists, GP practices) a ☐
- b. Only hospital grounds b ☐
- c. Only within a designated perimeter around NHS buildings c ☐
- d Other suggestions, including reasons, in the box below

Comments

**31. If you support national legislation, what exemptions, if any, should apply (for example, grounds of mental health facilities and / or facilities where there are long-stay patients)?**

Comments

**32. If you support national legislation, who should enforce it?**

Comments

**33. If you support national legislation, what should the penalty be for non-compliance?**

Comments

**34. If you do not support national legislation, what non-legislative measures could be taken to support enforcement of, and compliance with, the existing smoke-free grounds policies?**

Comments

**Smoke-free (tobacco) children and family areas**

**35. Do you think more action needs to be taken to make children's outdoor areas tobacco free?**

Yes ☐ No ☐

**36. If you answered 'yes' to Question 35, what action do you think is required:**

- a. Further voluntary measures at a local level to increase the number of smoke-free areas a ☐
- b. Introducing national legislation that defines smoke-free areas across Scotland b ☐
- c. That the Scottish Government ensures sufficient local powers to allow decisions at a local level as to what grounds should be smoke-free c ☐
- d. Other actions. Please specify in the box below

Comments

**37. If you think action is required to make children's outdoor areas tobacco-free, what outdoor areas should that apply to?**

Comments

**Age verification policy 'Challenge 25' for the sale of tobacco and electronic cigarettes**

**38. Do you agree that retailers selling e-cigarettes, refills and tobacco should be required by law to challenge the age of anyone they believe to be under the age of 25?**

Yes ☒ No ☐

**39. Do you agree that the penalties should be the same as those which are already in place for selling tobacco to someone under the age of 18?**

Yes ☐ No ☐

Neither yes or no – see extended response

**Unauthorised sales by under 18 year olds for tobacco and electronic cigarettes**

**40. Do you agree that young people under the age of 18 should be prohibited from selling tobacco and non-medicinal e-cigarettes and refills unless authorised by an adult?**

Yes ☒ No ☐

**41. Who should be able to authorise an under 18 year old to make the sale, for example, the person who has registered the premises, manager or another adult working in the store?**

See extended response

**42. Do you agree with the anticipated offence, in regard to:**

- |                                 |                                       |
|---------------------------------|---------------------------------------|
| a. the penalty                  | a <input checked="" type="checkbox"/> |
| b. the enforcement arrangements | b <input checked="" type="checkbox"/> |

See extended response

**Equality Considerations**

**43. What issues or opportunities do the proposed changes raise for people with protected characteristics (age; disability; gender reassignment; race; religion or belief; sex; pregnancy and maternity; and sexual orientation)?**

See extended response

**44. If the proposed measures are likely to have a substantial negative implication for equality, how might this be minimised or avoided?**

See extended response

**45. Do you have any other comments on or suggestions relevant to the proposals in regard to equality considerations?**

N/A

**Business and Regulatory Impacts Considerations**

**46. What is your assessment of the likely financial implications, or other impacts (if any), of the introduction of each of these proposals on you or your organisation?**

See extended response

**47. What (if any) other significant financial implications are likely to arise?**

See extended response

**48. What lead-in time should be allowed prior to implementation of these measures and how should the public be informed?**

See extended response

**49. Do you have any other comments on or suggestions relevant to the proposals in regard to business and regulatory impacts?**

See extended response

As a party to the World Health Organization's Framework Convention on Tobacco Control (FCTC), Scotland has an obligation to protect the development of public health policy from the vested interests of the tobacco industry. To meet this obligation, we ask all respondents to disclose whether they have any direct or indirect links to, or receive funding from, the tobacco industry. We will still carefully consider all consultation responses from the tobacco industry and from those with links to the tobacco industry and include them in the published summary of consultation responses.

See extended response



Fontem Ventures' response to:

The Scottish Government's Consultation on Electronic  
Cigarettes and Strengthening Tobacco Control in Scotland



---

December 2014

[www.fontemventures.com](http://www.fontemventures.com)

# A Consultation on Electronic Cigarettes and Strengthening Tobacco Control in Scotland

## Response: Fontem Ventures

### Introduction

Fontem Ventures is dedicated to developing and growing a portfolio of innovative products including electronic cigarettes. A 100% subsidiary of Imperial Tobacco Group (ITG), we nevertheless operate at arm's length from our parent company and are focusing on non-tobacco opportunities only.

Currently Fontem Ventures has one vapour product available on the UK market: Puritane electronic cigarettes. The only electronic cigarette to be sold by Boots, Puritane uses pharmaceutical-quality nicotine, and is produced in an FDA-approved manufacturing facility, while the final product - which conforms to UK quality and safety standards - is assembled in an MHRA-approved facility in Liverpool.

As a manufacturer that leads the industry in protecting consumer safety by setting exemplary standards in manufacturing quality and responsibility, Fontem Ventures welcomes regulation that promotes such an approach across the electronic cigarette sector. The protection of children and young people is an important part of our stance on responsibility, and we consequently applaud recent regulation such as the UK rules on advertising and marketing which aim to limit the extent to which electronic cigarette advertising can target or appeal to an under-18 audience. These new rules constitute an exemplary set of regulations that, while promoting a responsible approach among manufacturers, nevertheless take into account the general consensus among the medical community that electronic cigarettes offer significant potential public health benefits (see the open letter to the WHO cited below), and consequently enable manufacturers to compete (through raising awareness and understanding via marketing activity) with the tobacco products to which they provide an alternative.

Here, the word “alternative” is key: electronic cigarettes are fundamentally different to tobacco cigarettes or other tobacco products. As has been made clear by a range of independent tobacco and health organisations, electronic cigarettes do not contain tobacco, do not emit smoke and do not involve any kind of combustion process (e.g. see [here](#) for the ASH briefing on electronic cigarettes dated June 2014). Accordingly, electronic cigarettes warrant their own set of legislation; it would be inappropriate to conflate them with tobacco products either by applying tobacco restrictions directly to them (e.g. smoke-free laws) or by incorporating them into tobacco-specific legislation.

It is also vital that other legislation takes into account the significant emerging evidence of the potential for electronic cigarettes to provide public health benefits by acting as a gateway out of smoking. Studies funded by Cancer Research UK found that people attempting to quit smoking who used electronic cigarettes (which they refer to as “electronic cigarettes”) were approximately 60% more likely to succeed than those who used willpower alone or over-the-counter nicotine replacement therapies. The same report noted that “electronic cigarettes could “substantially improve public health because of their widespread appeal and the huge health gains associated with stopping smoking” (see [here](#) for the report). Meanwhile, in April 2014 the charity ASH published a report noting that “Electronic cigarettes are proving more attractive to smokers than NRT while providing them with a safer alternative to cigarettes”, adding that “There is evidence that they can be effective in helping smokers’ quit and little evidence that they are being used by never smokers” (see [here](#) for the ASH report), while the Lancet published a report which predicted that EVPs “...have far greater reach and higher acceptability ... among smokers than NRT” (see [here](#) for the Lancet report).

Experts from University College London have even estimated that for every million smokers who give up tobacco products in favour of e-cigarettes, more than 6,000 premature deaths could be prevented annually (see articles from September 2014 in the [Times](#) and the [Guardian](#)).

We would point regulators considering vaporisers to the open letter to the WHO published in May 2014 (see [here](#) for the full letter). It was signed by more than fifty health and tobacco specialists, who recommended that the following principles should underpin the public health approach to tobacco harm reduction:

1. Tobacco harm reduction is part of the solution, not part of the problem.
2. Tobacco harm reduction policies should be evidence-based and proportionate to risk, and give due weight to the significant reductions in risk that are achieved when a smoker switches to a low risk nicotine product.
3. On a precautionary basis, regulators should avoid support for measures that could have the perverse effect of prolonging cigarette consumption (since policies that are excessively restrictive or burdensome on lower risk products can have the unintended consequence of protecting cigarettes from competition from less hazardous alternatives).
4. Targets and indicators for reduction of tobacco consumption should be aligned with the ultimate goal of reducing disease and premature death, not nicotine use per se, and therefore focus primarily on reducing smoking.
5. Tobacco harm reduction is strongly consistent with good public health policy and practice and it would be unethical and harmful to inhibit the option to switch to tobacco harm reduction products.
6. It is counterproductive to ban the advertising of electronic cigarettes and other low risk alternatives to smoking.
7. It is inappropriate to apply legislation designed to protect bystanders or workers from tobacco smoke to vapour products.
8. The tax regime for nicotine products should reflect risk and be organised to create incentives for users to switch from smoking to low risk harm reduction products.
9. WHO and national governments should take a dispassionate view of scientific arguments, and not accept or promote flawed media or activist misinterpretations of data.
10. WHO and parties to the FCTC need credible objective scientific and policy assessments with an international perspective.

They summarise their approach as follows: *“The potential for tobacco harm reduction products to reduce the burden of smoking related disease is very large, and these products could be among the most significant health innovations of the 21<sup>st</sup> century – perhaps saving millions of lives.”*

We would welcome such an approach being applied across the board. As legislators in Scotland and beyond consider the consumption of electronic cigarettes, it is thus vital that they weigh up the medical consensus concerning the products, as well as the ramifications of prohibiting, limiting or “denormalising” their use.

## Responses

**1. See response form**

**2. See response form**

**3. See response form**

**4. See response form**

**5. See response form**

**6. See response form**

**7. See response form**

**8. Should young people and adult non-smokers be protected from any form of advertising and promotion of electronic cigarettes?**

We cannot answer this question as it is unclear what the wording “protected from any form of advertising promotion of electronic cigarettes” implies. We oppose the notion of a blanket ban on e-cigarette advertising, since it is important that the marketing and advertising of electronic cigarettes is permitted so as to enable retailers to raise awareness of products, communicate factual information and subsequently compete as an alternative to tobacco products. We also stress, however, that it is at the same time vital that stringent regulation applies, so as to ensure that advertising does not target underage users or non-smokers. We believe, for instance, that the e-cigarette industry has a responsibility to consistently convey and reinforce the message that its products are not suitable for, and should not be retailed to, consumers under the age of 18.

The CAP/BCAP rules in the UK (in full [here](#)) provide an appropriate model for regulation. Stringent and comprehensive, they demonstrate an exemplary approach towards youth protection while allowing manufacturers and retailers to advertise their products in a responsible, factual and appropriate way.

**9. See response form**

**10. If you believe that regulations are required, what types of domestic advertising and promotion should be regulated?**

While the EUTPD introduces some regulation regarding advertising and marketing and we would oppose a blanket ban on advertising electronic cigarettes, country-specific regulation needs to go further in terms of ensuring that advertising and marketing activities do not carry out any form of brand stretching or specifically target an underage audience. Regulation should thus stipulate anti-brand-stretching and youth protection measures with regard to all advertising formats. As per our response to question 8, the CAP/BCAP rules in the UK (in full [here](#)) provide an exemplary model in this respect.

**11. If you believe that domestic advertising and promotion should be regulated, what, if any, exemptions should apply?**

The advertising of electronic cigarettes which are licensed as medical devices should not be subject to electronic cigarette specific regulation - advertising of such products should instead comply with the relevant regulation for medical devices.

**12. Are you aware of any information or evidence that you think the Scottish Government should consider in relation to regulating domestic advertising in relation to impacts on children and adults (including smokers and non-smokers)?**

We would point to the open letter to the WHO published in May 2014 which was signed by more than fifty specialists in nicotine science and public health policy (see [here](#) for the full letter). One of the principles it advocates is as follows:

*“It is counterproductive to ban the advertising of electronic cigarettes and other low risk alternatives to smoking. The case for banning tobacco advertising rests on the great harm that smoking causes, but no such argument applies to electronic cigarettes, for example, which are far more likely to reduce harm by reducing smoking. Controls on advertising to non-smokers, and particularly to young people are certainly justified, but a total ban would have many negative effects, including protection of the cigarette market and implicit support for tobacco companies. It is possible to target advertising at existing smokers where the benefits are potentially huge and the risks minimal. It is inappropriate to apply Article 13 of the FCTC (Tobacco advertising, promotion and sponsorship) to these products.”*

**13. Are you aware of any information or evidence that you think the Scottish Government should consider in relation to regulating domestic advertising in relation to impacts on business, including retailers, distributors and manufacturers?**

As per our comments in response to question 8, it is vital that retailers are able to raise awareness of products, communicate factual information and subsequently compete as an alternative to tobacco products. Stymying their ability to compete in this way would naturally have a knock-on effect on sales. More importantly, however, in prohibiting manufacturers and retailers from communicating as openly and transparently as possible, their consumers' ability to make informed choices about electronic cigarettes is inhibited. This could jeopardize the likelihood of their switching to electronic cigarettes - meaning they then cannot take advantage of the potential health benefits (as noted in question 12 and our introduction to this consultation) which the products offer.

**14. Do you agree that retailers selling electronic cigarettes and refills should be required to register on the Scottish Tobacco Retailers Register?**

Subjecting electronic cigarettes to tobacco-specific legislation is not appropriate: electronic cigarettes contain no tobacco and consequently cannot be defined as tobacco products. Electronic cigarettes are fundamentally different to tobacco cigarettes or other tobacco products: as has been made clear by a range of independent tobacco and health organisations, electronic cigarettes do not contain tobacco, do not emit smoke and do not involve any kind of combustion process (e.g. see the ASH briefing on electronic cigarettes dated June 2014).

Electronic cigarettes should be subject to a separate set of regulations that reflects the fundamental difference between electronic cigarettes and tobacco products.

**15. See response form**

**16. If you answered 'no', to question 15, what offences and penalties should be applied?**

We left question 15 blank because, per our response to question 14, we oppose the notion that e-cigarette legislation should take the form of extended tobacco legislation. Electronic cigarettes contain no tobacco and therefore are not tobacco products. They should consequently be considered as a separate product category subject to their own and separate set of regulations.

In the context of penalties for unlicensed sales of e-cigarette, however, we would consider it proportionate for electronic cigarette legislation to be in line with equivalent legislation for tobacco and alcohol products. All three product types are suitable exclusively for adult consumers, so the penalties for undermining this

condition of sale should be comparable and reflect the age-restricted nature of the products to which they are applicable.

**17. See response form**

**18. See response form**

**19. If you answered, 'no' to Question 17, please give reasons for your answer.**

Taking action on using electronic cigarettes in enclosed public spaces would be premature as there is no scientific evidence to date to suggest that “vaping” is harmful to bystanders. A ban would undermine any potential health benefits (see introduction to this response) of vaping by making it less accessible and attractive for smokers looking for an alternative to tobacco.

Indeed, there is strong support among the UK medical community for a regulatory regime for electronic cigarettes that maintains their accessibility. See, for instance, the aforementioned open letter to the WHO published in May 2014, which states that:

*“It is inappropriate to apply legislation designed to protect bystanders or workers from tobacco smoke to vapour products. There is no evidence at present of material risk to health from vapour emitted from electronic cigarettes. Decisions on whether it is permitted or banned in a particular space should rest with the owners or operators of public spaces, who can take a wide range of factors into account. Article 8 of the FCTC (Protection from exposure to tobacco smoke) should not be applied to these products at this time.”*

This position was reinforced by leading UK tobacco and electronic cigarette experts in a joint article published on 5 September 2014 in *Addiction Journal* which criticised the WHO’s call for “greater regulation of electronic cigarettes, including bans on indoor use” (available in full [here](#)). One of the authors of the response, Professor Ann McNeill of the National Addiction Centre at King’s College London, publicly stated that electronic cigarettes are “much safer than cigarettes”, adding that “the WHO’s approach will make it harder to bring these products to market, inhibit innovation and put off smokers from using [them]” (see articles from September 2014 in the [Times](#) and the [Guardian](#)).

Regulators considering the use of electronic cigarettes in enclosed public places should weigh up the risks of the devices relative to tobacco products, and should also take into account the fact that forcing electronic cigarette users - the vast majority of whom are former smokers or current smokers trying to reduce/stop their tobacco consumption - to share a space with smokers could well undermine their attempts to quit smoking.

A separate issue is that of “heated tobacco” or “heat-not-burn” tobacco cigarettes, modified tobacco products which primarily heat rather than burn tobacco. These should not be confused or conflated since they contain tobacco, and contain many of the chemicals found in tobacco smoke, we would suggest that they should fall within the scope of all current tobacco legislation, including smoke-free legislation.

**20. Are you aware of any evidence, relevant to the used of electronic cigarettes in enclosed spaces, that you think the Scottish Government should consider?**

In this context, the Scottish Government should consider the lack of evidence that electronic cigarettes are harmful, as referenced in the open letter in our response to question 19. This not only states that there is “no evidence at present of material risk to health from vapour emitted from electronic cigarettes”, but also points out that “Tobacco harm reduction policies should be evidence-based and proportionate to risk, and give due weight to the significant reductions in risk that are achieved when a smoker switches to a low risk nicotine product”.

In addition, Fontem Ventures has carried out its own research (report available on request [here](#)) showing that vaping indoors does not release chemicals or toxins in levels that would endanger bystanders or users. For instance, ambient air in a room in which three users had vaped Puritane™ electronic cigarettes

continually for almost three hours still complied easily with workplace exposure limits for all chemicals analysed - in other words, air containing exhaled e-cigarette vapour was still of such high quality that bystanders could be exposed to it for a prolonged period of time, day after day, without experiencing any adverse effects on their health.

Fontem is not alone in this conclusion - in the article published in Addiction Journal on 5<sup>th</sup> September 2014, the authors, all experts in the field of tobacco, state that the concentrations of toxins in e-cigarette vapour are “too low to present a significant health risk” to bystanders.

**21-37: As an e-cigarette manufacturer, it would be inappropriate for us to comment on tobacco-specific matters, since our products contain no tobacco and consequently belong to an entirely different product category. We have therefore left questions 21-37 blank.**

**38. See response form**

**39. Do you agree that the penalties should be the same as those which are already in place for selling tobacco to someone under the age of 18?**

We have left our response to this question blank, since we oppose the notion that e-cigarette legislation should take the form of extended tobacco legislation. Electronic cigarettes contain no tobacco and therefore are not tobacco products. They should therefore be considered as a separate product category subject to their own, separate set of regulations.

In the context of penalties for selling products to under-18s, however, we would consider it proportionate for electronic cigarette legislation to be in line with equivalent legislation for tobacco and alcohol products. All three product types are suitable exclusively for adult consumers, so the penalties for undermining this condition of sale should be comparable and reflect the age-restricted nature of the products to which they are applicable.

**40. See response form**

**41. Who should be able to authorise an under 18 year old to make the sale, for example, the person who has registered the premises, manager or another adult working in the store?**

Each sale made by an under-18 should be authorised by the holder of a premises licence, the designated premises supervisor or any individual aged 18 or over who is authorised by such a holder or supervisor.

**42. Do you agree with the anticipated offence, in regard to:**

**a. the penalty**

**b. the enforcement arrangements**

We agree with the penalty and enforcement conditions, provided that both are outlined in separate and e-cigarette-specific pieces of legislation (see responses to questions 14, 16 and 39 where we explain the importance of distinguishing between tobacco and electronic cigarettes). We would, however, suggest that the offence not only applies to the (adult) person who has sold the e-cigarette, but also to the person under 18 who has purchased the e-cigarette, in line with alcohol legislation and in order to act as a deterrent.

**43. What issues or opportunities do the proposed changes raise for people with protected characteristics (age; disability; gender reassignment; race; religion or belief; sex; pregnancy and maternity; and sexual orientation)?**

Enacting a ban on using electronic cigarettes in enclosed public places could be problematic for the disabled or for people of restricted mobility by forcing them to leave and re-enter restricted areas in order to “vape”.



**44. If the proposed measures are likely to have a substantial negative implication for equality, how might this be minimised or avoided?**

We would advocate strongly against such a ban. However, if such a ban were enacted, the negative implications for people of restricted mobility could be mitigated by creating designated and enclosed “vaping” areas in enclosed public spaces such as train stations.

**45. N/A**

**46. What is your assessment of the likely financial implications, and / or any other impacts (if any), of the introduction of each of these proposals on you or your organisation?**

***Proposal 1 - Age Restriction for electronic cigarettes***

*Option 1 - Do nothing. There would continue to be no age restriction on electronic cigarettes and refills which could be sold to individuals of any age, including children. Although many retailers operate a voluntary restriction on sales to children and young people.*

- This would not affect Fontem Ventures - we already operate under a self-imposed youth protection policy and do not sell our products to people under 18 years old.

*Option 2 - Designate electronic cigarettes and / or refills as age-restricted products for purchase by adults aged 18 and over.*

- As mentioned above, Fontem Ventures already operates under a self-imposed youth protection policy and we do not sell our products to people under 18 years old.
- It could level the playing field by ensuring that all manufacturers must abide by the same rules and consequently can only sell to the same limited consumer group. This effect would be minimal, however, since most credible manufacturers already operate under an age-restriction policy.

***Proposal 2 - Proxy Purchase for electronic cigarettes***

*Option 1 - Do nothing. The introduction of an age restriction for electronic cigarettes would prevent children and young people under the age of 18 from directly purchasing them. However, it would still be possible for an adult to purchase them and legally supply them to a child or young person under age 18.*

- This would be very unlikely to affect Fontem Ventures - our products are carefully targeted at adults and are of minimal appeal to under 18s.

*Option 2 - Create an offence for an adult to supply an e-cigarette and/or refill to a young person under age 18 (“proxy purchase”)*

- As above, this would be very unlikely to affect Fontem Ventures - our products are carefully targeted at adults and are of minimal appeal to under 18s.

**Proposal 3 - Domestic Advertising and Promotion of electronic cigarettes**

*Option 1 - Do nothing*

- This would not affect Fontem Ventures.

*Option 2 - Introduce a ban on domestic advertising and promotion (this could include advertising and promotion of electronic cigarettes by way of billboards, leafleting, brand-sharing, free distribution, nominal pricing, point of sale and domestic events sponsorship) of electronic cigarettes.*

- This would inhibit Fontem Ventures’ ability to communicate clear information about our products in such a way as to enable our consumers to make informed decisions, which would undermine



consumer choice (potentially leading to consumers continuing to use tobacco products) and restrict Fontem Ventures' ability to grow awareness of our products. Other manufacturers would face the same difficulties, with several indirect repercussions:

- Consumers could be less likely to switch from tobacco products to electronic cigarettes.
- Advertising media - print, audiovisual, billboards - would lose out on potential revenues which would otherwise be generated via e-cigarette advertisements.

*Option 3 - Introduce a ban on domestic advertising and promotion of electronic cigarettes with exceptions to allow distribution of information about, and the accessibility of, electronic cigarettes aimed at adult smokers to enable them to make informed choices about whether to switch from tobacco to an e-cigarette.*

- This would inhibit Fontem Ventures' ability to communicate clear information about our products in such a way as to enable our consumers to make informed decisions, which would undermine consumer choice (potentially leading to consumers continuing to use tobacco products) and restrict Fontem Ventures' ability to grow awareness of our products. Other manufacturers would face the same difficulties, with several indirect repercussions:
  - Consumers could be less likely to switch from tobacco products to electronic cigarettes.
  - Advertising media - print, audiovisual, billboards - would lose out on potential revenues which would otherwise be generated via e-cigarette advertisements.
- We would recommend that the Scottish Government consider a fourth option, which is to adopt legislation modelled on the [CAP/BCAP rules](#) which came into effect in November 2014.

#### ***Proposal 4 - Registration requirements to retail electronic cigarettes***

*Option 1 - Do nothing.*

- This would not affect Fontem Ventures.

*Option 2 - Establish a statutory requirement for e-cigarette retailers to register on the Scottish Tobacco Retailers Register.*

- This would not affect Fontem Ventures.

***Proposals 6 and 7 are specific to tobacco products and it is therefore inappropriate for us to comment***

#### ***Proposal 8 - Age verification policy for tobacco and electronic cigarettes***

*Option 1 - Do nothing.*

- This would not affect Fontem Ventures - we already sell our products exclusively via channels (our own website and Boots) that already operate an age verification policy.

*Option 2 - Create an age verification policy (require proof of age for sales to anyone who appears under age 25) for tobacco products and electronic cigarettes akin to alcohol licensing legislation.*

- As mentioned above, this would not affect Fontem Ventures - we only sell our products via channels (our own website and Boots) that already operate an age verification policy.
- It could level the playing field by ensuring that all manufacturers must abide by the same rules and consequently can only sell to the same limited consumer group. This effect would be minimal, however, since most credible manufacturers already operate under an age-restriction policy.

#### ***Proposal 9 - Unauthorised sale of tobacco and electronic cigarettes by a young person under the age of 18***

*Option 1 - Do nothing*

- This would not affect Fontem Ventures.

*Option 2 - Prohibit young people under the age of 18 from selling tobacco products and electronic cigarettes unless they are authorised by someone over the age of 18.*

- This would not affect Fontem Ventures - we already sell our products exclusively via channels (our own website and Boots) where sales are supervised by over-18s.

#### **47. What (if any) other significant financial implications are likely to arise?**

There are two key financial issues in terms of regulating electronic cigarettes: costs of implementation and enforcement; and taxation.

The creation of a regulatory regime will naturally be costly in terms of the implementation phase (consultation and advisory, drafting, reviewing) and the enforcement of its provisions. However, these costs should be offset by the following factors:

- The revenues generated by appropriate taxation of electronic cigarettes (a step which Fontem Ventures advocates as part of any e-cigarette regulation).
- The potential public health benefits (see the introduction to this response) and potential increase in productivity (cited in the accompanying report to this consultation) indirectly generated by smokers switching to electronic cigarettes.

#### **48. What lead-in time should be allowed prior to implementation of these measures and how should the public be informed?**

We would suggest that - as will be the case in other EU Member States - implementation of measures pertaining to electronic cigarettes should be scheduled to coincide with the entering into force of the EUTPD in May 2016, since this already contains a number of relevant measures.

The public should be informed in a timely manner, with the announcement of any new measures being published via all channels available to the Scottish Government (media communications, own website, any official printed publications, as well as social media).

#### **49. Do you have any other comments on or suggestions relevant to the proposal?**

##### **Taxation**

The proposal does not include any provisions for taxation. Fontem Ventures would advocate a flat-rate tax being applied to nicotine-containing products, with the amount subsequently increasing in proportion to the nicotine concentration - i.e. higher nicotine concentrations should be subject to higher tax rate than low concentrations.

Non-tobacco substances and liquids which do not contain nicotine should not be taxed as there is not any justification for a tobacco or nicotine excise and also to avoid unintended consequences of including all vapourisers (e.g. air fresheners, asthma inhalers, nasal medicines).

##### **Flavourings**

Flavourings are an absolutely vital component of electronic cigarettes: without them, the products are simply unusable and their absence will severely diminish their acceptance in the market. Manufacturers should be permitted both to use them and to mention their inclusion in factual terms on labelling and marketing material. However, as part of our responsible approach to youth protection, we believe that flavours should not be particularly appealing to young people, and therefore would agree with a ban on overtly fruity or candy flavours such as cola or bubblegum.

##### **“Heated tobacco” or “heat-not-burn” products**

Certain tobacco manufacturers have set out plans to launch modified tobacco products which primarily heat rather than burn tobacco. While we accept that such products may offer reduced smoke emissions in comparison with combustible tobacco products, we would challenge the “reduced risk” claim given the absence of endorsement from a regulatory body, and the fact that many of the chemicals found in tobacco smoke are still produced by heated tobacco products. It is disappointing that manufacturers are attempting to resurrect “lower-risk” tobacco products, which have proven over the years to be both unsatisfying for consumers and based on disputed health claims, instead of concentrating on products with a truly different risk profile and which respond to consumer needs, such as electronic cigarettes.

