

Scottish Government response to consultations on Electronic Cigarettes, Tobacco, Wilful Neglect/III Treatment and Duty of Candour

May 2015

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The Scottish Government consulted late last year on a number of policy options seeking to build on existing public health measures and to improve the standard of care. Independent analysis of the responses has been undertaken and is published today on the Scottish Government's website in three separate reports. We have continued to consider the evidence and engage with stakeholders since the consultations closed by way of meetings and visits to organisations and businesses.

A Public Health Bill was announced in November 2014 which set out the Scottish Government's intention to bring forward legislation in a number of areas and the Minister for Public Health, Maureen Watt, is pleased to confirm the direction of travel following the consultations.

Electronic Cigarettes and Tobacco Control

The use of e-cigarettes has increased significantly in recent years. Alongside this, a debate about the potential benefits and risks of these products has emerged within the public health community. The Tobacco Products Directive sets out an EU-wide response to some of the themes in this debate by creating a regime which introduces new safeguards for consumers. This includes setting a limitation on nicotine content, a requirement for manufacturers to report on ingredients, and labelling requirements.

The Scottish Government recognise that current smokers may wish to use e-cigarettes to help with quitting or reducing their tobacco use. However, we are also keen that young people should be protected from possible nicotine addiction and smoking-like behaviours which may be confused with smoking. We believe that there is no good reason for a non-smoking adult to use an e-cigarette. There was strong support from respondents to the Scottish Government's consultation on the proposals to regulate e-cigarettes.

The Scottish Ministers have long made clear their commitment to introducing restrictions on the age at which e-cigarettes can be accessed. The Public Health Bill will restrict the sale of non-medicinal e-cigarettes and related products (e.g. refills) to people aged 18 and over, introduce measures to make it an offence to purchase them on behalf of someone under the age of 18 ('proxy purchase') and to ban the sale of them from vending machines. There are already measures in place which restrict the sale of tobacco products to young people under the age of 18, make it an offence to proxy purchase on behalf of an under 18 and ban sales from vending machines.

In addition to the age of sale measures set out above, we will strengthen these arrangements further by requiring retailers of non-medicinal e-cigarettes and related products, and tobacco products, to have an age verification policy in place to require anyone under the age of 25 to show identification before the retailer can make the sale. Similarly, because they are age-restricted goods, the Bill will bring in measures to ensure that anyone under the age of 18 cannot sell them unless they are formally authorised by someone over the age of 18. These policies will operate in a similar way to measures already in place for alcohol sales.

It will be necessary to enforce measures relating to e-cigarettes in more diverse range of outlets than is currently the case for tobacco products. The Scottish Government will therefore bring forward legislation to require retailers selling non-medicinal e-cigarettes and related products to be registered on a central register held by Scottish Ministers. This will assist enforcement agencies to provide advice and support to retailers as they currently do for retailers who are registered to sell tobacco products.

The EU Tobacco Products Directive recognises the need for action and will ban the advertising and promotion of non-medicinal e-cigarettes and related products which have a cross-border effect, including:

- Television
- Radio
- Information society services
- Most publications (e.g. newspapers)
- Events marketing with a cross-border effect (such as televised sporting events)

However, the Directive does not regulate the domestic advertising of e-cigarettes and related products. We will therefore introduce legislation containing powers to ban certain forms of domestic advertising. This could include:

- Published adverts e.g. billboards and leaflets;
- Brand-stretching (the process of using an existing brand name for new products or services that may not seem related);
- Free distribution (marketing a product by giving it away free); and
- Sponsorship within a purely domestic setting

There is no public health reason for using e-cigarettes apart from their potential to support an attempt to stop smoking or to reduce tobacco use. They should not be marketed to non-smokers and children. As already highlighted, The Scottish Government recognise that current smokers may wish to use e-cigarettes to help with quitting or reducing their tobacco use. We will therefore exempt point of sale advertising, it is important that smokers continue to find the products accessible, and are able to ask questions and obtain information about the products and their use.

The consultation also explored what, if any, legislative measures were required to support smoke-free outdoor areas. The Scottish Ministers have made clear their determination to see Scotland remain at the forefront of those countries around the world committed to bold action to reduce the harm caused by tobacco. Our ambition to reduce smoking prevalence to 5% or lower will make an important contribution to reducing health inequalities. They have been clear about their ambition to create a tobacco-free Scotland and remain committed to introducing the necessary measures that will help achieve that goal.

To achieve this ambition, we need to create an environment that supports people to choose not to take up smoking, and helps those that do smoke to quit. We have long said that NHS Scotland should be an exemplar in promoting healthy behaviours and

providing smoke-free settings. We will therefore bring forward legislation to support smoke-free NHS hospital grounds. NHS Hospitals should be exemplars in providing smoke-free environments and there is good public support for such a measure. There was also strong support for action in this area from respondents to the Scottish Government's consultation.

The consultation also explored what further action, if any, is necessary to support the implementation of children's smoke-free outdoor areas. Respondents were largely supportive of the need for smoke-free outdoor areas, however; the most popular of the policy options consulted on was for the Scottish Government to ensure sufficient local powers to allow decisions at a local level. We would prefer an approach that engages communities positively, building on the hard work of Local Authorities and innovative approaches which are already being implemented. We will not introduce legislation in the forthcoming Bill. We will continue to engage with Local Authorities in monitoring implementation of smoke-free outdoor areas for children's areas.

We are committed to protecting children from the effects of second-hand smoke by prohibiting smoking in cars with children on board. To that effect, the Minister for Public Health announced last month, this government's support for the Smoking Prohibition (Children in Motor Vehicles) (Scotland) Bill, which has been put forward by Jim Hume MSP.

Since the Scottish Parliament was established in 1999, clear and decisive action has helped shift cultural attitudes to smoking and this legislation will help meet the Scottish Government's objective to support longer healthier lives and to tackle the significant inequalities in Scottish society.

Scotland has a strong record on tobacco control and we are keen that we continue progress to realise our vision for a tobacco-free Scotland and set a world-leading target to achieve this by 2034. This will mean that a child born in 2013 will become an adult in a Scotland which is largely devoid of tobacco-use with all the health, social and economic benefits that entails. This would be an achievement of which we should all be proud.

In order to achieve a tobacco-free generation additional legislation and policy are necessary. This Bill forms part of a wider tobacco control policy while addressing the new and expanding area of e-cigarettes.

Duty of Candour

Our proposals to introduce a statutory duty of candour across all health and social care settings in Scotland have been endorsed and strongly supported by the vast majority of those who responded to the consultation. This is not about introducing a national reporting system for adverse events. It is about making it clear to all those who use health and social care services and all those who provide them what is expected when harm has occurred.

The duty of candour procedure will emphasise learning, change and improvement - three important elements that we know will make a significant and positive contribution to quality and safety in health and social care settings. This will also act as a powerful

signal that when harm occurs, the focus will be on support and learning, and not blame or fear.

We recognise that the introduction of this legislation is part of a range of mechanisms that will contribute to conditions within our healthcare service that will support learning and continuous improvement when there has been an unexpected or unintended event that results in death or harm.

It will strongly complement the existing professional duty of candour already in place for all health and social care professionals. We recognise these duties currently exist, and we know from research in this area that there can sometimes be discrepancies between intentions and actions – particularly when staff can feel vulnerable and frightened too when something unexpected happens. The duty of candour procedure is not only about disclosure – it is fundamentally about people be they patients, service-users, families, staff and the people of Scotland who have an interest in a health and social care system that focuses on support, learning and improvement.

The duty of candour procedure will promote an emphasis on apology when an unexpected or unintended outcome occurs. It will also recognise the need to provide emotional support for everyone involved.

Responses to our consultation recognised the benefits of our proposals for individuals and their families. We recognise that people want there to be assurance that any failures in care processes will be addressed. It is the intention of Scottish Government that people will be provided with information allowing them to make informed choices about their responses to the event; have the opportunity to seek help, advice and support and to participate in a process to review what happened.

Our proposals will have a positive effect on professional practice, patient and service user safety and public confidence. They will ensure that there is an organisational emphasis that staff are supported and trained for their involvement with this work. Staff must feel they have the necessary skill and confidence if they are to be meaningfully involved in the delivery of the duty of candour procedures.

We also recognise the concerns expressed by some that the introduction of this legislation will create bureaucracy and unnecessary administrative burden. The introduction of the organisational duty of candour must not become a 'box-ticking' or 'form-filling' exercise. Organisations should place equal emphasis on disclosure of any instances of harm as well as support for staff and a public commitment to learning and improvement.

The duty of candour procedure provides a way for organisations to outline the approaches that they adopt in responding to reports of unintended or unexpected events that have resulted in harm. The procedure will support a consistent national response and ensure there is a consistent focus on learning and improvement. Public reporting will help people's understanding of the health and social care environment and empower them by providing information. It will also encourage organisations to involve people with reviews that inform learning and improvement.

The proposals reflect the Scottish Government's commitment to putting people at the heart of our health and social care services in Scotland, while also recognising and respecting the need of staff to feel supported when contributing to system review and learning. All those in leadership positions within health and social care have a responsibility to explain the intention of the duty of candour procedure, creating the conditions where, open, transparent, respectful and supportive disclosure and review of harm influences change and improvement.

We recognise that there are still some parts of our health and social care system where there is not yet a well developed appreciation of the complexities and common contributors to harm when it happens. We are clear that organisations providing health and social care will be expected to focus their actions after an episode of harm on systems and process review not on individual blame.

Reporting will be a requirement of the duty of candour procedure. This will be monitored through existing mechanisms to scrutinise and review the quality of care. Our proposals not to introduce civil penalties or criminal sanctions were strongly supported in the consultation. However, respondents want there to be provisions to take action against organisations who repeatedly fail to deliver the duty of candour procedure.

Many of the issues expressed in the consultation responses will be addressed through the development of guidance that will support implementation – ensuring clear, consistent and comprehensive advice for all organisations who will be required to implement the new organisational duty of candour. Scottish Government will develop the guidance in partnership with a wide range of organisations through on-going testing, learning and changes to identify what works best.

The introduction of a statutory duty of candour on organisations will ensure that everyone in Scotland benefits from the same duty of candour procedure – a procedure that respects and supports everyone affected and that over time will build on already high levels of satisfaction and confidence in our care systems. The focus on learning and improvement through respectful support, transparency and commitment to learning will ultimately enhance all of the work that is already taking place to make our health and social care system the best in the world.

Wilful Neglect/ill-treatment

The Scottish Government recognises that people in Scotland receive high quality care and treatment in a variety of health and social care situations, delivered by dedicated professionals. The overwhelming majority of staff employed in these settings work to the very best of their ability in providing these services, and do so in a manner that respects and protects the dignity and rights of individuals and their families

However, we know that there are instances where people receiving care or treatment are deliberately mistreated or neglected. Although these instances are rare, the responses to the consultation indicated strong support for our proposed introduction of an offence of wilful neglect/ill treatment which will allow the criminal justice system to effectively deal with those who perpetrate the worst cases of neglect or ill-treatment. The Public Health Bill will therefore include provisions creating a new criminal offence of ill treatment or wilful neglect.

The proposals for a new offence of ill treatment or wilful neglect in health and social care settings were put out to consultation and this exercise provided us with clear views on how the offence should be framed. I have considered the responses to the consultation and reflected them in the approach taken to creating this new offence.

The offence will apply to those providing healthcare or social care to adults.

As part of the consultation, we asked for views on applying this offence to formal healthcare settings and social care for children. A number of the responses received indicated the need for further discussion about how best to implement these proposals, and how such offences would work alongside existing legislation that impacts children and young people. We have listened to these responses, and we will not include any provisions in relation to children in the Bill as introduced to Parliament, but will undertake a further consultation on these provisions as the Bill progresses.

In line with our proposals and the views of consultation respondents, the offence will apply to the conduct of individuals. Commission of the offence will not require any harm to be caused to the patient as a result of that conduct. It will apply to organisations and individuals employed to care or treat people as well as those who manage or supervise in these settings. It will not apply to unpaid carers but will apply to those who provide care or treatment as a volunteer on behalf of a voluntary organisation.

A Consultation on Electronic Cigarettes and Strengthening Tobacco Control in Scotland: Analysis of Responses:

<http://www.gov.scot/Publications/2015/05/7711>

Proposals for an Offence of Wilful Neglect or ill-treatment in Health and Social Care Settings: Consultation Analysis - Report:

<http://www.gov.scot/Publications/2015/05/9655>

Proposals for an Offence of Wilful Neglect or ill-treatment in Health and Social Care Settings: Consultation Analysis - Research Findings:

<http://www.gov.scot/Publications/2015/05/1796>

Proposals to Introduce a Statutory Duty of Candour for Health and Social Care Services: Consultation Analysis - Report:

<http://www.gov.scot/Publications/2015/05/8235>

Proposals to Introduce a Statutory Duty of Candour for Health and Social Care Services: Consultation Analysis - Research Findings:

<http://www.gov.scot/Publications/2015/05/2930>



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This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at
The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-78544-340-4 (web only)

Published by The Scottish Government, May 2015

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS49574 (05/15)

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