

Heated Tobacco Products – Legal Interpretation, Advertising & Retail Guidance (Scotland)

There are currently several **heated tobacco systems** in the UK market that use a combination of electronic devices and consumable sticks. These fall into two main categories:

1. Tobacco-Containing Heated Products

These systems heat tobacco sticks to release nicotine-containing vapour. The main products include:

- **IQOS** – uses *HEETS*
- **IQOS Iluma** – uses *TEREA*
- **Ploom** – uses *EVO sticks*

✓ The **devices themselves** do **not contain tobacco or nicotine**.

✗ The **sticks contain tobacco** and are sold separately.

2. Non-Tobacco, Nicotine-Containing Products

- **TEO** – uses *NEAFS sticks*
These contain **nicotine** but **no tobacco** and may not fall under tobacco or nicotine inhaling product regulations.

Legal Framework in Scotland

The **Tobacco and Primary Medical Services (Scotland) Act 2010** defines a “tobacco product” as:

“A product consisting wholly or partly of tobacco and intended to be smoked, sniffed, sucked or chewed.”

Since heated tobacco **is not smoked**, these products fall **outside this definition**.

Interpretation for Enforcement

A **very valid and potentially important argument** from an enforcement and legal interpretation perspective is that whilst heated tobacco products (like **IQOS HEETS** or **Ploom EVO sticks**) are **designed to be used with a heating device**, the **tobacco sticks themselves** are:

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- **Individually packaged.**
- **Sold separately from the device.**
- **Composed of processed tobacco** in a form that **may technically be smoked** (though ineffectively or not intended).

So the Argument Goes:

Even though the product is *intended* to be heated, the tobacco itself is still a **substance that could be smoked**—and therefore may still fall within the legal definition of a “tobacco product.”

In Scotland:

A “**tobacco product**” is defined as a product: “*consisting wholly or partly of tobacco and intended to be smoked, sniffed, sucked or chewed.*”

If someone could theoretically:

- Light the stick and inhale the smoke (however impractical or unpleasant),
- Or **modify** the use of the stick (e.g. break it open to smoke the contents),

... then a case could be made that the sticks are **capable of being smoked**, and therefore, **age restrictions and other controls do apply.**

Despite being intended for heating, the tobacco sticks:

- Contain tobacco.
- May be *capable* of being smoked or misused.
- Are therefore (arguably) covered by the “tobacco product” definition.

Enforcement officers may reasonably interpret these as tobacco products and apply:

- Age restrictions.
- Display restrictions.
- Seizure powers (if appropriate).

Retail Display Rules

- Devices (e.g. IQOS, Ploom) **can be displayed** in shops.

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- Tobacco-containing sticks **cannot be displayed**, as they are considered tobacco products.

Age Restriction Guidance

- Tobacco-containing sticks (HEETS, EVO, TERE) **must not be sold to under-18s**.
- NEAFS (nicotine but no tobacco) **may not be covered**, but best practice is **to treat them as age-restricted**.

Advertising Rules

Under the **Tobacco Advertising and Promotion Act 2002**, a “tobacco product” must be:

“intended to be smoked, sniffed, sucked or chewed”.

Since heated tobacco **isn’t smoked**, some companies argue these products **do not fall under the advertising ban**, meaning:

- Advertising of **IQOS and similar products may be legally permitted**.
- This includes **billboards, posters, and in-store promotions**.

⚠ However, this regulatory loophole may be addressed in future legislation.

Practical Enforcement Advice

- Treat all tobacco-containing heated sticks as **tobacco products**.
- Apply the **usual age and display restrictions**.
- Advise retailers to avoid advertising until further clarity is provided, although this cannot be enforced.
- Clearly distinguish between **devices (not restricted)** and **sticks (age-restricted and non-displayable)**.
- Encourage cautious treatment of **non-tobacco, nicotine products** to prevent underage access.