

Smokefree Generation and Vaping in Young People Consultation

Response by KCC Public Health and Trading Standards (6 December 2023)

Question 1 - Do you agree or disagree that the age of sale for tobacco products should be changed so that anyone born on or after 1 January 2009 will never be legally sold (and also in Scotland, never legally purchase) tobacco products?

Response: Agree

There is clear evidence that most smokers take up smoking at a young age, with [80% of smokers report starting before the age of 20](#). The addictive nature of smoking means that it soon becomes addictive rather than a lifestyle choice and only one third of those who continue to smoke will manage to quit in their lifetime. Raising the age of sales would make tobacco products less accessible to young people, delay the start of smoking and potentially reduce the risk of them starting smoking in the first place.

From an enforcement perspective, the Trading Standards department recognises the diversion from other age-related sale legislation that is currently enforced. Appreciation is given to the more unique nature of tobacco products and therefore the necessity to raise the age limit in line with the recommendations of the Khan Review, that being a bold step that is necessary to meet the objectives of a smokefree future.

The decline in tobacco usage can be correlated against legislative changes (such as display bans and imposition of plain packaging). A further tightening of supply regulations is demonstrably beneficial to the objective. It is however also noted that a change in the legislation will provide challenges of enforcement and as such raising the age limit may benefit from the mandatory production of ID for all tobacco sales.

It should also be acknowledged that some tobacco control legislation relies on moral enforcement where in practice it is often not practical to legally enforce. For instance, smoking in vehicles with children.

Question 2 – Do you think that proxy sales should also be prohibited?

Response: Yes

Proxy sales should also be prohibited. Purchasing tobacco products on behalf of young people under the legal age of sale undermines the work, effort, and intention of protecting young people from starting smoking in the first place.

Prohibition of proxy sales should continue to mirror the legal age limit, in whichever format that takes, for the sake of consistency and understanding of who can access tobacco products. It should however be noted that enforcement of proxy sales is difficult and for the most part is a matter of education for the public and retailers alike.

Question 3 - Do you agree or disagree that all tobacco products, cigarette papers and herbal smoking products should be covered in the new legislation?

Response: Agree

All tobacco containing products and ephemera should be covered by the new legislation to ensure there is consistency in the legislation. It would not make sense to give young people access to cigarette papers and other such items whilst only restricting the age of sale to tobacco. This would create more opportunities for young people to access a smoking habit. The aim is to make smoking less accessible to young people.

Question 4 - Do you agree or disagree that warning notices in retail premises will need to be changed to read 'it is illegal to sell tobacco products to anyone born on or after 1 January 2009' when the law comes into effect?

Response: Agree

This would be the most sensible approach. Warning notices in retail premises are essential for clarity and as a possible deterrent to young people trying to purchase tobacco products. The notice described will reduce the need for signage to be updated each year with the revised age of sale law.

It would be prudent to adapt the current signage as suggested as it will support retailers and be used as a tool to inform customers when challenging for ID. One single change to the signage required would be of least disruption to retailers and with precedent caused minimal disruption in 2007 when raising the legal age limit to 18.

With the advent of the display ban, many tobacco gantries are provided by the tobacco industry incorporating the statutory notice. It is foreseeable that there would be a reluctance to replace these and/or any covering notice could be removed which in spite of possible enforcement activity may dilute the measure.

Removing the statutory notice completely may in future be a preferential step as its presence advertises the availability of tobacco products.

Question 5 - Do you agree or disagree that the UK Government and devolved administrations should restrict vape flavours?

Response: Agree

ASH have highlighted fruit flavour vapes are the most popular for the young people who identified as vapers in the Yougov survey. There is also a lot of media attention on the colours, flavouring and packaging of disposable vapes that seem to be attractive and targeted to young people which influences public perception on flavoured vapes.

There should be a restriction, but it is difficult to determine where the line should be drawn. Post implementation of the Tobacco and Related Products 2016, many flavoured liquids were based on sweet flavours (for example. doughnut, pastries, custard) however the majority of products are now fruit flavoured in varying combinations.

Research exists showing users quitting tobacco do not wish to emulate tobacco flavours in their vapes and they prefer fruit flavours. The issue that needs addressing is how the

flavours are marketed, for example. is 'Gummy Bear' appropriate for what is essentially mixed fruit. While certain flavour combinations may attract young people, it is likely that this is no greater than with adult users and therefore could not be considered 'targeted'.

It should also be noted that Reg 38(3)(c) prohibits packaging from referring to 'taste' while permitting 'flavourings' to be used. Further clarification of this measure may establish that gummy bear would be a taste, whereas referring to the flavour combination used would not be prohibited.

Our Kent County Council Public Health and Trading Standards teams are embarking on work to better understand factors influencing the choices of young people to take up vaping or to continue vaping, and the influence of factors including marketing and flavour advertisement in exacerbating this. We hope that this will provide valuable information to help guide thinking about the restrictions needed for optimal effectiveness.

Question 6 - Which option or options do you think would be the most effective way for the UK Government and devolved administrations to implement restrictions on flavours? (You may select more than one answer)

Response: Option 1 (out of the options provided below)

- Option 1: limiting how the vape is described
- Option 2: limiting the ingredients in vapes
- Option 3: limiting the characterising flavours (the taste and smell) of vapes
- Don't know

As before, the current regulations in Reg 38(3)(c) prohibit packaging referring to taste but allows for flavouring. It would therefore be pertinent with further clarification to the legislation to provide clear guidance as to what is allowable. This would still permit vapes that are attractive to tobacco users attempting to quit tobacco and concurs with the FRESH opinion.

Question 7 - Which option do you think would be the most effective way for the UK Government and devolved administrations to restrict vape flavours to children and young people?

Response: Option C (out of the options provided below)

- Option A: flavours limited to tobacco only
- Option B: flavours limited to tobacco, mint and menthol only
- Option C: flavours limited to tobacco, mint, menthol and fruits only

We believe these options restrict flavours too much and the more effective approach would be to restrict the description of flavours and some flavours that are described as children's confectionary (such as bubble gum), but if we had to choose an option, we think that flavours should include fruits as this is shown to be popular among adults who vape (ASH Yougov survey).

The options provided restrict products outside of those specific categories (for example, lemonade which may be better described as lemon, but also sweet flavours). Option C still provides plenty of options but would require further consultation to ensure products of legitimate use are not unnecessarily excluded if there is no **targeted** appeal to young people.

From an enforcement perspective, without clear guidance it will be difficult to draw the line, as with the lemonade vs lemon flavour example where focus of enforcement capacity may be best focussed in other matters.

Question 8 - Do you think there are any alternative flavour options the UK Government and devolved administrations should consider?

Response: Yes

The way flavours are described should be regulated as identified above to avoid appealing to children. Effective Regulation on description should reduce the need to restrict flavouring altogether.

However, with further restriction, consideration as to how enforcement will be carried out specifically how a characterising flavour may be established and the costs associated in doing so where packaging does not specifically refer to that flavour, but is known to be the case through other means

Question 9 - Do you think non-nicotine e-liquid, for example shortfills, should also be included in restrictions on vape flavours?

Response: Yes

Non-nicotine vapes should be included in the restrictions as they may lead to a gateway to nicotine-containing vapes. Regulations on all vapes needs to be consistent to make enforcement management.

Without question, the exclusion of these products from existing legislation undermines the safety efforts. While other legislation provides a general requirement to be safe, this is costly and difficult to test for.

Question 10 - Which option do you think would be the most effective way to restrict vapes to children and young people?

Response: Option 2 (out of the options outlined below)

- Option 1: vapes must be kept behind the counter and cannot be on display, like tobacco products
- Option 2: vapes must be kept behind the counter but can be on display

Vapes being kept behind the counter will make underage sales regulations more easily enforceable but they should be kept on display so that adults can see the brands, range and flavours on offer.

If option 1 were pursued it would restrict vapes to young people as we know from restricting tobacco displays, the introduction of legislation has correlated with a decrease in tobacco usage, but by the same measure it will likely reduce adult usage contrary to aims of switching from tobacco to e-cigarette products.

Question 11 - Do you think exemptions should be made for specialist vape shops?

Response: Yes

Especially if vape shops are a member of the IBVTA which sets standards on the sale and protocols of selling vapes. Advertising and marketing should be restricted to the adult target group and be inside the shop and not visible to children and young people who are bypassing.

This will mirror the clauses of the Tobacco Advertising and Promotion (Display) (England) Regulations 2010 allowing bulk tobacconists to display tobacco products and in a more controlled environment should not unduly lead to promoting or accessing of these products by young people.

The definition of specialist vape shop will however need careful consideration. As already suggested a member of a recognised Trade Association such as the IBVTA may be relevant criteria. A significant proportion of premises complained about nationally are 'vape and mobile' style shops and caution would be urged not to include these as despite representing a significant portion of the business activity, it would be wrong to consider these lower risk.

Question 12 - If you disagree with regulating point of sale displays, what alternative measures do you think the UK Government and devolved administrations should consider?

Point of sale displays should be regulated. Even in businesses which would be considered responsible, Trading Standards teams find vapes displayed alongside child appealing products such as sweets and collector stickers due to their natural placement around the till area.

Question 13 - Which option do you think would be the most effective way for the UK Government and devolved administrations to restrict the way vapes can be packaged and presented to reduce youth vaping?

Response: Option 1 (out of the options outlined below)

- Option 1: prohibiting the use of cartoons, characters, animals, inanimate objects, and other child friendly imagery, on both the vape packaging and vape device. This would still allow for colouring and tailored brand design
- Option 2: prohibiting the use of all imagery and colouring on both the vape packaging and vape device but still allow branding such as logos and names
- Option 3: prohibiting the use of all imagery and colouring and branding (standardised packaging) for both the vape packaging and vape device

Option 1 would restrict appeal to children and yet still give the flexibility of appeal to adults. Adults may want to buy in to colour and brand design and should be given the freedom of choice to do so..

A hybrid of option 1 and option 2 allowing colours to be used as part of the flavour

differentiation, however removing imagery which is un-necessary to branding, does little for adult usage but is arguably child appealing.

Question 14 - If you disagree with regulating vape packaging, what alternative measures do you think the UK Government and devolved administrations should consider?

We do not disagree with regulating vape packaging. In fact, we believe that packaging requires tighter regulation.

Question 15 - Do you agree or disagree that there should be restrictions on the sale and supply of disposable vapes?

Response: Agree

Kent County Council has written to both Secretary of State for Health and Social Care and Secretary of State for Environment, Food and Rural Affairs in August 2023 requesting a ban on disposable vapes due to public health, environment, and wider concerns.

11.6% of our adult population in Kent smoke, similar to the England average, and many smokers trying to quit choose to vape as part of their quit attempt. Whilst vaping can be a helpful adjunct to help adult smokers quit smoking, it is not considered risk-free, particularly in children and young people where there is risk of creating nicotine addiction and concerns about harm to their developing lungs, brain and immune system. Despite this, we have seen a rise in vaping among young people, particularly using disposable vapes, despite it being an offence to sell (or proxy-purchase) vape products to anyone aged under 18.

Kent Trading Standards believes that disposable vapes are contributing to the increase in underage sales and have a significant impact on the environment due to wastage. In August 22 to March 23, the team stopped 520,067 vapes at the ports of which 451,210 were found to be illegal and seized, preventing them from entering the UK. By June 2023 a further 36,360 illegal vapes have been stopped and seized by the team.

Disposable vapes are a hazard for waste and litter collection, causing fires in bin lorries and other waste infrastructure. With 1.3 million disposable vapes being thrown away every week, they have become regular and obvious litter on our streets. The design and manufacture of vapes do not accord with design standards that support safe methods of disposal nor methods of recycling without going through expensive and limited specialist treatment. Their lithium batteries can become flammable if crushed, creating fire and safety issues.

Question 16 - Do you agree or disagree that restrictions on disposable vapes should take the form of prohibiting their sale and supply?

Response: Agree

As outlined in our response above, Kent County Council has written to both the Secretary of State for Health and Social Care and the Secretary of State for Environment, Food and Rural Affairs in August 2023 to request a ban on disposable vapes. This is on the grounds of public health, environment, and wider concerns.

We acknowledge that vaping can be a helpful adjunct to help adult smokers quit smoking. However, it is not considered risk free, particularly in children and young people where there is a risk of creating nicotine addiction along with concerns about its potential to harm their developing lungs, brain and immune system. Kent Trading Standards believes that disposable vapes are contributing to the increase in underage sales and are having a significant impact on the environment due to wastage.

In addition to the public health risks, disposable vapes are a hazard for waste and litter collection which cause fires in bin lorries and other waste infrastructure. These burdens come at a cost to the council taxpayer through fire damage to equipment, and due to the specialist treatment needed to deal with disposing of vapes that is designated as hazardous waste. With 1.3 million disposable vapes being thrown away every week, they have also become a regular and obvious item of litter on our streets. The design and manufacture of vapes do not accord with design standards that support safe methods of disposal nor methods of recycling without going through expensive and limited specialist treatment. Given the frequency of fires, creating what may be perceived to be safe disposal routes will be insufficient and should not be relied upon to contain the damaging ramifications of such poor design. Furthermore, they are frequently discarded in residual waste streams causing further harm to the environment.

Question 17 - Are there any other types of product or descriptions of products that you think should be included in these restrictions?

Other nicotine-containing products are being introduced frequently (for example; pouches and pods) and can appeal to children and young people. The marketing, advertising and packaging restrictions will need to be applied to these and new products to ensure that they

do not become the new product choice among children as vape products become increasingly inaccessible to them.

All nicotine containing products should be captured as they provide a gateway to addiction with no inference of assisting withdrawal from tobacco products. Additionally 0% products e-cigarette devices should be captured under the legislation. Testing of products marketed as 0% have found considerable nicotine content and additionally these products are not subject to strict standards regarding ingredients and emissions.

Question 18 - Do you agree or disagree that an implementation period for restrictions on disposable vapes should be no less than 6 months after the law is introduced?

Response: Disagree

The popularity of vaping among children has been growing over the last few years, so immediate implementation is required to stem the trend.

It may depend on which measures are introduced as to what is a practical sell through period for existing stocks, however a shorter implementation time should be applied to new products entering the country, properly enforceable at the border.

Question 19 - Are there other measures that would be required, alongside restrictions on supply and sale of disposable vapes, to ensure the policy is effective in improving environmental outcomes?

Environmental policies to introduce the safe recycling of disposable vapes ensuring the onus on the retailer of WEEE goods is properly enforced and changing the definitions so that users appreciate the items to be recyclable rather than disposable.

We suggest that retailers should be licensed as they are with the sale of alcohol which include conditions surrounding applications for a retailer take-back scheme. From an environmental basis WEEE compliance schemes are the only way forward and KCC are working with partners to support this.

Question 20 - Do you have any evidence that the UK Government and devolved administrations should consider related to the harms or use of non-nicotine vapes?

Response: No

No evidence at present, but we will be conducting a local survey in Kent to explore the use of nicotine and non-nicotine vapes among secondary school children. We are hoping that the outcome of this survey will provide us with information to take forward into focus groups with young people to understand more about their attitudes and behaviours and whether non-nicotine vapes have any appeal to this age group.

As previously stated, some vape products marketed as 0% have been found to contain nicotine. Additionally, there is a small but not insignificant market for CBD vapes which do not receive the same scrutiny as other vapes due to their 0% nicotine status.

Question 21 - Do you think the UK Government and devolved administrations should regulate non-nicotine vapes under a similar regulatory framework as nicotine vapes?

Response: Yes

Non-nicotine vapes have a place in the adult population who are trying to quit smoking but should still fall under the same regulatory framework as nicotine vapes as their potential appeal to children may lead to a gateway into nicotine-containing vapes. Regulations would also ensure that the industry does not target their products to appeal to children in the first place.

This creates a consistent approach to products whose design was originally intended as a smoking cessation aid. 0% nicotine products serve no purpose to a young person other than to act as a gateway to other addictive products or as an introduction to branded nicotine products.

Question 22 - Do you have any evidence that the UK Government and devolved administrations should consider on the harms or use of other consumer nicotine products such as nicotine pouches?

Response: Yes

Our Trading Standards team are aware of such products and the harms/risks they pose to children.

Nicotine in these products is just as addictive as in a vape products and therefore should be treated in the same way. The lack of age restriction and product requirement implies them to be risk free and marketing is currently unregulated.

Question 23 - Do you think the UK Government and devolved administrations should regulate other consumer nicotine products such as nicotine pouches under a similar regulatory framework as nicotine vapes?

Response: Yes

Without regulating other consumer nicotine products, there is a risk that these will become more popular and appeal to children in place of vapes as the vape regulations come into force and potentially lose their appeal to young people. We need to ensure that we are not shifting nicotine addiction from one device to another.

Unless these products are a licensed medicine then they should be subject to similar restrictions in relation to age of users, product requirements, advertising and health warnings. To not do so risks transferring young people from one un-necessary addictive product to another.

Question 24 - Do you think that an increase in the price of vapes would reduce the number of young people who vape?

Response: No

Not necessarily. Children and young people have varying levels of disposable income and will purchase according to desire, appeal or how much they want something. If a product is costly or expensive, this may be a status symbol amongst their peers. We need to be mindful that some vulnerable and low-income adults also use vapes which are affordable to them. We do not want to price vape use out of the market and marginalise these groups from vaping as a means to quit smoking.

As with tobacco, the price of vapes as an addictive product tends to be relatively inelastic,

For example, an increase in price won't necessarily decrease demand due to addiction, however it will deter new users both for young and adult.

The current affordability of vapes compared to tobacco products is a factor in behaviour change for tobacco users and the imposition of a tax may be a negative influence if too high. However a tax on single use products may disincentivise a young person from taking up a nicotine addiction yet encourage an adult ex-smoker to transition from disposable devices to long term refillable devices.

Question 25 - Do you think that fixed penalty notices should be issued for breaches of age of sale legislation for tobacco products and vapes?

Response: Yes

Powers to issue fixed penalty notices would provide an alternative means for local authorities to enforce age of sale legislation for tobacco products and vapes in addition to existing penalties.

Fixed penalty notices may act as a deterrent and be relatively easy for Trading Standards to enforce compared to some other enforcement actions.

Allowing for quick disposal of cases will allow more capacity for enforcement. The main point of concern would be that non-payment is dealt with as a criminal matter rather than as a civil debt, recovery of which is often more costly for the authority than the fine itself.

Question 26 - What level of fixed penalty notice should be given for an underage tobacco sale?

Response: Other (out of the options below)

- £100
- £200
- Other

The penalty charge will need to be sufficient to act as a deterrent

£200 would be suitable for a first offence, however a sliding scale for persistent offenders before resorting to prosecution would also be appropriate.

Question 27 - What level of fixed penalty notice should be given for an underage vape sale?

Response: Other (out of the options below)

- £100
- £200
- Other

The penalty charge will need to be sufficient to act as a deterrent.

£200 would be suitable for a first offence, however a sliding scale for persistent offenders before resorting to prosecution would also be appropriate.