

## Creating a smokefree generation and tackling youth vaping

Response from Action on Smoking and Health

Closing date 6 December 2023 at 11:59pm

### Creating a smokefree generation

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?

- Agree
- Disagree
- Don't know

Please explain your answer and provide evidence or your opinion to support further development of our approach. (maximum 300 words)

ASH supports the proposal to raise the age of sale for tobacco products, which under all the modelled scenarios show significant benefit to health, wellbeing and productivity. ASH does not support penalising purchase.

Two thirds (67%) of adults in England support the proposal with low levels of opposition (14%).\*

\* Total sample size 3,533 adults, undertaken by YouGov online between 15th - 17th November 2023. Figures have been weighted and are representative of all adults in England (aged 18+).

Tobacco is uniquely harmful, with up to two in three smokers dying prematurely and people who smoke requiring social care on average 10 years earlier than non-smokers. Smoking is the leading cause of premature death and disability responsible for half the difference in life expectancy between the most and least advantaged in society. Exposure to maternal smoking and passive smoking is the leading modifiable risk factor of poor birth outcomes. Analysis of the overall cost of smoking to society in 2023 finds that the overall impact for England is £75.2 bn (£89.3 bn UK). The cost to public finances in England is £20.7 bn, nearly double the £11.3 bn collected in tobacco tax revenues.

Landman Economics (2023) <https://ash.org.uk/uploads/CBPF-model-2023.pdf>

Furthermore, analysis of the ESPAD survey has concluded that besides preventing tobacco smoking, the adoption of stronger governmental tobacco control policies in European countries also seems to contribute to the prevention of vaping among adolescents.

Cerrai et al (2022) <https://onlinelibrary.wiley.com/doi/10.1111/add.15982>

A comprehensive communication strategy in the run-up to implementation, as was delivered ahead of the ban on smoking in indoor public places in 2007, is essential to ensure public awareness, promote compliance and make enforcement easier.

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

- Yes
- No
- Don't know

Please explain your answer and provide evidence or your opinion to support further development of our approach. (maximum 300 words)

Yes, proxy sales laws should be in line with age of sale laws to ensure consistency and aid enforcement.

However, ASH does not support penalising purchase. Smoking is an addiction, and most smokers started smoking as children. Two thirds of those who try just one cigarette, go on to become, at least temporarily, daily smokers,\* and daily smokers are addicted smokers. Most adult smokers want to stop smoking but on average it takes thirty attempts to succeed,\*\* and many never do. Government announcements of additional support for smokers to quit, for anti-smoking campaigns to motivate smokers to quit, and funding to enforce tobacco legislation, are an essential complement to the smokefree generation legislation.

\*Birge et al (2018) <https://academic.oup.com/ntr/article-abstract/20/12/1427/4591649?redirectedFrom=PDF>

\*\*Chaiton et al (2016) <https://bmjopen.bmj.com/content/6/6/e011045>

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

- Agree
- Disagree
- Don't know

Please explain your answer and provide evidence or your opinion to support further development of our approach. (maximum 300 words)

All tobacco products, cigarette papers and herbal smoking products should be included in the new legislation.

Heated tobacco products (HTPs) are tobacco products and as such should be included. While available data, including from a Cochrane review, suggest that HTPs reduce exposure to harmful combustion products, indirect comparisons from published data and a direct comparison based on an unpublished lab study by

academics from UCL suggest that HTPs have a more limited harm reduction role than e-cigarettes, providing lower reductions in biomarkers of harm such as nitrosamines. There are also very limited data available on the impact of HTPs on successful smoking cessation, with most published work finding an impact on cigarette sales rather than on smoking behaviour, and with some analysis (e.g., from the International Tobacco Control study Japan data) indicating that HTPs primarily lead users to dual use with cigarettes rather than complete cessation.  
<https://www.cochranelibrary.com/cdsr/doi/10.1002/14651858.CD013790.pub2/full>

If any tobacco or associated products are excluded, it will make enforcement more challenging and create opportunities for the industry to circumvent the legislation, as has been the case in other regulations where exemptions exist e.g. excluding cigarillos from laws relating to menthol flavouring, minimum pack sizes and standardised packaging, and limiting tobacco flavour bans to only flavours which are 'characterising'. The evidence demonstrates that these exemptions have undermined the effectiveness of the menthol ban.  
<https://tobaccocontrol.bmj.com/content/tobaccocontrol/30/6/708.full.pdf>  
<https://www.medrxiv.org/content/10.1101/2023.09.08.23295247v1>

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?

- Agree
- Disagree
- Don't know

Please explain your answer and provide evidence or your opinion to support further development of our approach. (maximum 300 words)

Warning notices including cutoff date of birth are a simple and easily understood way of making sure all staff and customers understand who cannot legally be sold tobacco.

ASH also supports introduction of a mandatory "age verification policy" as is already the case in Scotland, but to match the smokefree generation policy this should be applied to all those purchasing tobacco, not as is currently the case in Scotland only to those who appear to be under 25.

Requiring retailers to ask all tobacco customers for proof of age to determine whether they are over the age limit is supported by 67% of adults in England (14% oppose with the remaining 19% saying they neither support nor oppose or don't know).\*

\*Total sample size 3,533 adults, undertaken online between 15th - 17th November 2023. Figures have been weighted and are representative of all adults in England (aged 18+).

A survey of 961 independent retailers carried out for ASH in 2022 showed that mandatory age of sale verification as applied currently in Scotland was supported by 83% of retailers, and by 91% in Scotland where it has been in force since 2017. <https://ash.org.uk/uploads/Retailer-research-report-online.pdf?v=1667303463>

Scottish Ministers, as allowed for by the legislation, have published helpful guidance on age verification policies, including

- (a) steps that should be taken to establish a customer's age,
- (b) documents that may be shown to the person selling a tobacco product, cigarette papers or a nicotine vapour product as evidence of a customer's age,
- (c) training that should be undertaken by the person selling the tobacco product, cigarette papers or nicotine vapour product,
- (d) the form and content of notices that should be displayed in the premises,
- (e) the form and content of records that should be maintained in relation to an age verification policy.

<https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2017/03/age-verification-guidance/documents/00515512-pdf/00515512-pdf/govscot%3Adocument/00515512.pdf>

### Tackling the rise in youth vaping

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

- Agree
- Disagree
- Don't know

Please explain your answer and provide evidence or your opinion to support further development of our approach. (maximum 300 words)

ASH supports restrictions on flavour descriptors but not on the flavours themselves. Descriptors which promote products using names which appeal to children like 'gummy bears', 'unicorn shake', are unacceptable. Banning a flavour, or category of flavours is much harder to implement. A study by the Netherlands Centre for Health Protection found 213 unique flavouring ingredients in e-liquids, with each e-liquid including on average 10. The pattern of flavour ingredients only enabled a 70% accurate prediction of which category of flavour an e-liquid belonged to. Kruseman et al (2021)

<https://tobaccocontrol.bmj.com/content/tobaccocontrol/30/2/185.full.pdf> Banning or restricting flavours or flavour ingredients could also potentially increase use of other potentially harmful ingredients which could be harmful. After Juul removed

fruit flavours ahead of impending US flavour bans, other companies developed Juul-compatible pods. Tests on the most popular flavour with youth, mango, showed they exposed users to more chemical constituents at higher concentrations than the original product. Dell et al (2022)

[https://tobaccocontrol.bmj.com/content/tobaccocontrol/31/Suppl\\_3/s230.full.pdf](https://tobaccocontrol.bmj.com/content/tobaccocontrol/31/Suppl_3/s230.full.pdf)

Flavour bans or restrictions could also lead to increased use of tobacco products. Sales data analysis after ENDS flavour bans were introduced in the US found that: An additional 15 cigarettes were purchased for every 1 less 0.7mL ENDS pod sold; 70% of the long-run effect on cigarette sales stems from non-menthol cigarettes; 40% of the long-run effect on cigarette sales stems from brands disproportionately used by youth. Friedman et al (2023)

[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4586701](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4586701) Preliminary analysis of survey data shows that e-cigarette flavour restrictions were associated with an additional 2 daily smokers for every 3 fewer daily vapers. Friedman presentation UK e-cig summit 2023

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)

- 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

Please explain your answer and provide evidence or your opinion to support further development of our approach. (maximum 300 words)

Youth vaping was low up to 2021 although there were already a large variety of flavours on the market. So flavours alone is an insufficient explanation for youth appeal for vaping. In fact the ASH youth survey finds that the most common reason is experimentation (just to give it a try 54%) and peer pressure (other people do it so I do too, 18% up from 11% the previous year), only 12% cited flavours, little changed on previous years.

The rise in youth vaping has been associated with the entry into the market of attractive, appealing and low price disposable vapes; and rapid growth in product promotion, particularly instore, and through branding. These are the issues of greatest concern which need to be urgently addressed.

<https://ash.org.uk/uploads/Use-of-vapes-among-young-people-GB-2023-v2.pdf?v=1697209531>

An experiment led by KCL Nicotine Research Group using the ASH GB Youth 2021 survey of 11-18 year olds found that compared with fully branded packaging, youth had higher odds of reporting no interest among people their age in trying the

e-liquids in white standardised packs with brand codes and limited flavour descriptors.

Taylor et al (2023 preprint not yet peer reviewed)

<https://osf.io/preprints/psyarxiv/wbj5v/>

ASH therefore supports comprehensive regulation of branding and brand imagery including restricting how flavours are described and promoted. Flavour regulations should prohibit sweet or candy names and other descriptors likely to appeal to children, such as 'gummy bear', 'bubblegum slush', 'pink lemonade' or 'banana split', while allowing simple descriptors like tobacco, menthol or, for fruit flavours, the fruit name.

Limiting how the vape is described, while not removing flavours from the market, would enable a range of flavours to be made available to support adults in their quit attempt while reducing the promotion of flavours in ways particularly likely to appeal to children.

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?

- 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**

Please explain your answer and provide evidence or your opinion to support further development of our approach. (maximum 300 words)

ASH has cited Option C as the least restrictive option, because the option to restrict only vape flavour descriptors rather than flavours themselves, which is our preference, has not been included (see answer to Q6 for the rationale behind our preference).

The 2022 e-cigarette evidence review for OHID concluded that flavours may help adults who smoke to transition away from smoking by increasing the enjoyment and satisfaction of vaping. See also ASH evidence submitted to the Health and Social Care Committee about the importance of non-tobacco flavours in helping adult smokers stop smoking.

<https://committees.parliament.uk/writtenevidence/122458/pdf/>

Vape flavours are less important to underage vapers who have never smoked than those who have. The ASH Smokefree GB youth survey in 2023 found that more than half of never smokers aged 11-17 say they vape 'just to give it a try' compared to a quarter of those who have ever smoked. Around one in five ever and never smokers say 'other people do it so I join in' while 21% of ever smokers say they

vape because they 'like the flavours' compared to 12% of never smokers. As with adults the most popular flavours for underage vapers are fruit (60%).

<https://ash.org.uk/uploads/Use-of-vapes-among-young-people-GB-2023-v2.pdf?v=1697209531>

However, if Government were to proceed with flavour restrictions then Option C is the Option ASH would prefer. In 2015 when the ASH annual adult Smokefree GB survey first asked about flavours tobacco was most popular at 38% followed by fruit flavour at 25% and menthol 19%. Tobacco is now the least preferred flavour even amongst current and ex-smokers (preferred by 11% and 14% respectively). More current and ex-smokers prefer fruit flavours (49% and 47%, respectively) and menthol (14% and 21%, respectively). This suggests that restricting these flavours could reduce the appeal of e-cigarettes as aids to quitting for smokers.

<https://ash.org.uk/uploads/Use-of-e-cigarettes-among-adults-in-Great-Britain-2023.pdf?v=1691058248>

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

• Yes

- No
- Don't know

Please explain your answer and provide evidence or your opinion to support further development of our approach. (maximum 300 words)

The TRPR already prohibits vitamins, stimulants and ingredients that are Carcinogenic, Mutagenic in unburnt form. Ongoing surveillance is needed to identify ingredients or flavourings currently allowed which should be banned because they increase the toxicity of the product when it is consumed. For instance the 2022 e-cigarette evidence review for OHID raised concerns about cinnamaldehyde and flavours with buttery/creamy characteristics.

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1107701/Nicotine-vaping-in-England-2022-report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1107701/Nicotine-vaping-in-England-2022-report.pdf)

Furthermore currently the MHRA only has powers to check that products as notified meet legal requirements. The MHRA should be given powers to test products to ensure they meet the required standards and to require the removal from the market of those that do not. Costs of testing and enforcement action should be met from notification fees. (For more detail see the uploaded document from ASH)

Given the risk of unintended consequences, whatever options are adopted it is essential that pre- and post-implementation monitoring and surveillance of the impact of regulatory changes on behaviour is undertaken and if any adverse

impact is found that there is a legal commitment to immediately review and revise the regulations as necessary.

A better understanding is also needed of comparative trends internationally which would be enhanced by surveys using the same data collection methods. ASH recommends that the government fund participation in future waves of the European School Survey Project on Alcohol and Other Drugs (ESPAD), carried out every four years among 35 European countries among children turning 16. The UK was a participant in this survey for the first five waves from 1995 to 2011, but ceased participation in 2015, the first year questions were asked in ESPAD about vaping. <https://onlinelibrary.wiley.com/doi/10.1111/add.15982>

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

• Yes

- No
- Don't know

Please explain your answer and provide evidence or your opinion to support further development of our approach. (maximum 300 words)

Youth surveys show awareness of shortfill e-liquids as well as use among those who vape, is common among young people.

Taylor et al 2023 advance online publication <https://doi.org/10.1136/tc-2022-057871>

ASH recommends that the Nicotine Inhaling Products (Age of Sale and Proxy Purchasing Regulations) 2015 and the TRPR 2016, be amended to include non-nicotine containing vaping products, such as shortfills, as well as any revised e-cigarette regulations that are introduced as a result of this consultation, to avoid loopholes and aid enforcement. (For more detail see the uploaded document from ASH)

However, as set out in our responses to Q5 and Q6 above, restrictions should be placed on the ways in which flavours are described rather than on the flavours themselves.

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

- 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

Please explain your answer and provide evidence or your opinion to support further development of our approach. (maximum 300 words)



Displays and promotion of vaping products in shops which are designed in ways appealing to children, through use of colour, brand names and imagery, is unacceptable. If these are prohibited as suggested by ASH and many others then we believe it would be appropriate to limit vaping displays to behind the counter, with no instore or externally visible promotion of vaping products other than display behind the counter allowed. Limiting vapes to behind the counter would also aid enforcement of age of sale laws.

To ban displays of vaping products completely risks reinforcing misunderstanding that vaping is as risky as smoking. For the first time in 2023 more 11-17 yr olds believed that vaping was more than, or equally harmful as smoking, up from 41% last year. This includes nearly half (46%) of those who have tried vaping, so believing vaping is at least as or more harmful than smoking does not appear to be putting children off trying vaping and may risk them seeing smoking and vaping as interchangeable. Qualitative research among young people who vape recruited from a community college and peer networks found that 90% of them had tried smoking, on average at a younger age than trying vaping, and most of them smoked and vaped interchangeably.

Notley 2023 e-cig summit presentation. NIHR RCF funded study of 29 young people who vape.

However, if monitoring and surveillance demonstrates that limiting display of vaping products to behind the counter is insufficient, then there should be powers in the primary legislation to allow the regulations to be strengthened to prohibit displays.

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

- Yes
- No
- Don't know

Please explain your answer and provide evidence or your opinion to support further development of our approach. (maximum 300 words)

Specialist tobacconists are given exemption from the display regulations for tobacco and specialist vape shops should not be more heavily restricted than specialist tobacconists. Specialist tobacconists are defined as shops that sell tobacco products by retail more than half of whose sales derive from the sale of cigars, snuff, pipe tobacco and smoking accessories. Specialist tobacconists are allowed to display tobacco products instore and advertise tobacco products other than cigarettes instore as long as they are not visible from outside the premises.

The Tobacco Advertising and Promotion (Specialist Tobacconists) (England) Regulations 2010.

[https://www.legislation.gov.uk/ukxi/2010/446/pdfs/ukxi\\_20100446\\_en.pdf](https://www.legislation.gov.uk/ukxi/2010/446/pdfs/ukxi_20100446_en.pdf) .

Liaison with Trading Standards and other relevant bodies (in line with the UK's Article 5.3 obligations) should be undertaken to determine whether this would be an appropriate definition for vape shops or whether it could lead to children remaining significantly exposed to their promotion. For example in New Zealand a loophole in the exemptions for specialist vape shops allowed shops to set up tiny specialist vape shop stores within stores to circumvent the regulations.

<https://www.thepress.co.nz/nz-news/350039698/stores-within-stores-loophole-dairies-exploit-vape-store-restrictions>

ASH also recommends a mandatory "age verification policy" for vaping products requiring proof of age for anyone appearing to be under 25. This would reinforce the message that specialist vape shops are only for adults aged 18+ and help enforcement in all shops selling vapes.

<https://www.legislation.gov.uk/asp/2016/14/section/3>

(For more detail see the uploaded document from ASH)

12. If you disagree with regulating point of sale displays, what alternative measures do you think the UK Government and devolved administrations should consider? Please explain your answer and provide evidence or your opinion to support further development of our approach. (maximum 300 words)

ASH supports regulation of point of sale displays. However, ASH also thinks that further measures are needed.

Enforcement of age of sale laws could be further strengthened by a mandatory "age verification policy" for vaping products requiring proof of age for anyone appearing to be under 25. This is supported by 83% of retailers in England and 91% in Scotland where this is already in operation.

<https://ash.org.uk/uploads/Retailer-research-report-online.pdf?v=1667303463>

<https://www.legislation.gov.uk/asp/2016/14/section/3>

The regulations on notification fees for producers of vaping products should be revised to allow their use for enforcement purposes such as MHRA testing of products for compliance with the regulations and funding for trading standards.

In order to support both communication and enforcement of e-cigarette regulations, a retail register/licensing scheme for e-cigarette retailers should be introduced with a requirement for publication of all persons and businesses carrying on a nicotine

containing product business, with a duty to notify any relevant changes (e.g. name and/or address). The information on the register to be made publicly available nationally and broken down by local authority areas with trading standards responsibilities. Only registered businesses should be allowed to sell vaping products, both nicotine and non-nicotine, and breaches of the e-cigarette regulations would result in removal from the register.

Lastly data collected under the annual reporting requirement in section 32 of the TRPR 2016 should be made publicly available.

<https://www.legislation.gov.uk/ukxi/2016/507/regulation/32/made>

(For more detail see the uploaded document from ASH)

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?

- 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

Please explain your answer and provide evidence or your opinion to support further development of our approach. (maximum 300 words)

There is compelling evidence to support much stricter regulation of the design, labelling, branding and brand imagery of vaping products.

Examples of inappropriate products available as at the close of the consultation include those:

- Designed to look like toys (fidget spinners, lighting up in the dark)
- Named after sweets such as gummy bears and bubblegum, and other brand names and descriptors appealing to children such as unicorns, vampires, slushies, and so on.
- In bright and attractive colours
- Cartoon-like designs, and characters.

Research from King's College London and ASH investigated how packaging affects the appeal of vaping to teenagers and adults. It found that those in the teenage group were more likely to report that their peers would have no interest in vapes when marketed in standardised white packaging, in contrast to the adult group whose interest in using vapes was not reduced by the standardisation of

packaging. This study suggests that standardised packaging measures may reduce the appeal of e-cigarettes among youths without reducing their appeal among adults.

<https://jamanetwork.com/journals/jamanetworkopen/article-abstract/2802391>

ASH recommends that the Government introduces primary legislation taking powers to limit brand names, imagery and colours, including on logos, including powers to prescribe the size and type face of any branding which does remain, as per tobacco packaging regulations. Subsequent regulations should be developed and implemented urgently to prohibit vaping products designed to look like toys, the use of cartoon like imagery, the use of sweet and other names attractive to children as brand names or descriptors, and the use of colours on products and packs. Furthermore tobacco products, including cigarillos, remain exempt from tobacco standardised packaging regulations and some other tobacco regulations. ASH recommends revising the regulations so cigarillos are regulated in the same way as cigarettes and HRT.

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

Please explain your answer and provide evidence or your opinion to support further development of our approach. (maximum 300 words)

Not applicable – ASH agrees that there need to be improvements in the way that vape packaging is regulated.

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

That is, those that are not rechargeable, not refillable or that are neither rechargeable nor refillable.

- Agree
- Disagree
- Don't know

Please explain your answer and provide evidence or your opinion to support further development of our approach. (maximum 300 words)

Both for environmental and youth vaping reasons 'disposable' vape use needs to be addressed. The rapid growth in youth vaping is clearly associated with the introduction into the market of a range of cheap, attractive and easy to use disposable vapes.

While disposable vapes are most popular with children and young adults who vape, use since 2021 has also grown significantly with older age groups.

Figure 4 <https://ash.org.uk/uploads/Use-of-vapes-among-young-people-GB-2023-v2.pdf?v=1697209531>

Figure 13 <https://ash.org.uk/uploads/Use-of-e-cigarettes-among-adults-in-Great-Britain-2023.pdf?v=1691058248>

Surveys for environmental charity, Material Focus, show a rapid growth in disposable vapes being thrown away since 2022.

<https://www.materialfocus.org.uk/press-releases/disposable-single-use-vapes-thrown-away-have-quadrupled-to-5-million-per-week/>

Although the problem is clear the solutions are not as obvious, nor are they necessarily the remit of DHSC. A ban or stricter regulations on disposable vapes for environmental reasons is DEFRA's responsibility, while taxation is that of HMT. This is a complex area of regulation and there are numerous risks of negative unintended consequences as set out in the joint briefing by ASH, CTSI and Material Focus.

<https://ash.org.uk/uploads/Policy-options-to-tackle-the-issue-of-disposable-single-use-vapes.pdf?v=1690989465>

ASH therefore recommends that before any final decision is made, DHSC convene a working group to review all the evidence and develop recommendations for a comprehensive regulatory approach to 'disposable' vapes. This should include a range of interested parties including OHID (DHSC), DEFRA, the OPSS (BEIS), HM Treasury and HMRC. Arms length bodies should include the Environment Agency, the MHRA, HMPPS and NHSE. Local government representatives should include the LGA, ACTSO and CTSI. Relevant civil society organisations should include ASH and Material Focus, plus representatives of the team responsible for the independent reviews on vaping for OHID and the RCP Tobacco Advisory Group currently reviewing the evidence on vaping, and other professional medical organisations, particularly relating to vulnerable groups like children and those with mental health conditions.

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

- Agree
- **Disagree**
- Don't know

Please explain your answer and provide evidence or your opinion to support further development of our approach. (maximum 300 words)

ASH believes that an effective ban on disposable vapes is not simple to implement, and risks failing to deliver a reduction in underage vaping, which is the stated

policy objective, while at the same time reducing the number of effective quitting options for some groups of vulnerable smokers.

A ban on disposable vapes may have several unintended consequences as set out in a joint paper from ASH, the Chartered Trading Standards Institute and Material Focus.

<https://ash.org.uk/uploads/Policy-options-to-tackle-the-issue-of-disposable-single-use-vapes.pdf?v=1690989465>

There are also complexities about how 'disposable' vaping products could be defined, presenting challenges for implementation and enforcement of any proposed ban. Trading standards and others have already identified that there are problems in defining these products which would make their banning difficult to implement effectively. The description used in the consultation of products 'that are not rechargeable, not refillable or that are neither rechargeable nor refillable' is already being circumvented. ASH has been warned that already some manufacturers are producing products which can be recharged, solely for the purpose of avoiding being categorised as 'disposable'. There are risks these have a low quality USB port which does not in practice make the product properly re-usable and could make them less safe to use.

Furthermore clinicians and stop smoking services have told us that 'disposable vapes' have benefits for vulnerable groups of smokers such as those in mental health settings and with dexterity issues, and would be a useful component of the Government's 'Swap to Stop' programme.

ASH therefore believes that further consideration is needed before a final decision is made on how these products should be regulated. See answer to Q15 above.

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

Please explain your answer and provide evidence or your opinion to support further development of our approach. (maximum 300 words)

Once the priority regulations are in place consideration should be given to regulating the shape and form of e-cigarette devices to provide greater standardisation. This could be beneficial from both an environmental and enforcement point of view, and prevent e-cigarettes being designed in the form of gadgets that may be appealing to children.

Careful consideration would need to be given to any policy development in this area to maximise the benefits and minimise the risk of negative unintended consequences.

Although this is not a regulatory issue ASH also recommends the implementation of anti-smoking campaigns which address public misperceptions of vapes such that large numbers of adults and children think that vaping is as harmful, or more harmful, than smoking. These misperceptions risk discouraging smokers from switch to vapes as a less harmful form of nicotine delivery, and potentially undermine the beneficial impact of schemes such as 'Swap to Stop'. They also risk encouraging people, including those who are underage, to use cigarettes and e-cigarettes interchangeably rather than using e-cigarettes as an aid to stopping smoking and preventing relapse.

ASH recommends the additional funding for anti-smoking campaigns evidence-based awareness-raising campaigns to highlight the health harms of tobacco and the many ways by which smokers can quit, including through the use of vapes. Representing vaping as an alternative to smoking for middle aged adults could also be designed to reduce the attractiveness of vaping as a recreational activity for children. The Fresh Smoking Survivors campaign is an example of how this can be achieved, as it tells the stories of real people from the North East who have suffered from a smoking-related disease and whose lives have improved after quitting, including through use of vapes. See [www.freshquit.co.uk](http://www.freshquit.co.uk).

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?

- Agree
- **Disagree**
- Don't know

Please explain your answer and provide evidence or your opinion to support further development of our approach. (maximum 300 words)

Not all regulatory changes require an implementation period. For example, the loophole which enables free distribution of any vape to anyone of any age needs to be closed urgently and does not require any implementation period.

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?

Please explain your answer and provide evidence or your opinion to support further development of our approach. (maximum 300 words)

As with many single use products, there are concerns about the environmental aspect of 'disposable' vapes that need to be addressed urgently, but these concerns relate to all vapes not just those defined as 'disposable'. There are particular concerns because vapes contain batteries and at the moment they are

categorised as toys, which is not appropriate given the large numbers of products, as identified by Material Focus, being bought and discarded without proper recycling. ASH supports the recommendations of Material Focus on how recycling can be improved.

<https://www.materialfocus.org.uk/press-releases/disposable-single-use-vapes-thrown-away-have-quadrupled-to-5-million-per-week/>

Vape companies are currently not complying with their environmental obligations and this needs to be addressed. DEFRA is reviewing and revising the WEEE regulations including considering changes needed to ensure the vaping sector plays its part in 'properly financing the cost of collection and treatment of their products when they become waste'. The full environmental costs of collecting and recycling vapes – including raising public awareness – can and should be met by industry and not by public finances with appropriate penalties being issues for non-compliance.

Furthermore, cigarette butts are also single use plastic, toxic to the environment and are the most common source of street litter, estimated to cost local authorities £40 million a year to clean up. In 2021 the Government committed to address this through the producer responsibility requirements of the 2021 Environment Act came into force, however there is still no news about when the tobacco industry will be forced to take financial responsibility for clearing up the mess made by billions of cigarettes sold last year, many of which end up on our streets.

DEFRA and DHSC [Government explores next steps to clean up tobacco litter in England](#). Press release. 30 March 2021.

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?

• Yes

- No
- Don't know

Please explain your answer and provide evidence or your opinion to support further development of our approach. (maximum 300 words)

ASH monitors the use of non-nicotine vapes and, among young people in 2023, found that: 51% of 11-17 year olds who currently vape said that the e-cigarette they used most often always contained nicotine; 30% said it sometimes contained nicotine; 9.5% that it never contained nicotine; with 10% saying they didn't know.

According to the ASH/ YouGov survey around 10% of current vapers report using zero-nicotine products and these vapers are twice as likely to be ex-smokers than smokers.



Further restrictions on non-nicotine vapes are needed to ensure that they are not accessed by teens nor exploited by industry to avoid regulations. However, they also have a function in supporting some adults and should be kept on the market in line with the regulations for nicotine containing products.

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

- Yes
- No
- Don't know

Please explain your answer and provide evidence or your opinion to support further development of our approach. (maximum 300 words)

Non-nicotine vapes should be regulated in the same way as nicotine containing vapes. Vaping is not risk free whether vapes contain nicotine or not. Furthermore this will prevent industry from using non-nicotine vapes to promote vaping in ways that they aren't allowed to do for nicotine-containing vapes.

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?

- Yes
- No
- Don't know

Please explain your answer and provide evidence or your opinion to support further development of our approach. (maximum 300 words)

Overall in 2023 adult use of nicotine pouches has remained low to date despite heavy marketing by industry including on social media and in clubs and other youth oriented venues. However, there are currently limited marketing restrictions and product requirements and no age of sale laws. Their use among those under 18s is undesirable but they may have a value for adult smokers looking to switch away from tobacco, therefore they should be regulated in a similar way to vaping products. The Government should not wait until a market has been established in those under 18 to take action (see answer to Q 23)

ASH has also been made aware that some local authorities in the North East have been contacted by agencies acting on behalf of companies – including Japan Tobacco International – promoting nicotine pouches. These approaches have included requests to hand out free promotional nicotine pouches in areas of high footfall. To date, we understand that no local authority has granted such a request

for reasons including Article 5.3 and also the lack of a regulatory framework for these products.

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?

• Yes

- No
- Don't know

Please explain your answer and provide evidence or your opinion to support further development of our approach. (maximum 300 words)

As we outlined in our 2021 response to the post-implementation review of tobacco regulations, we need regulations to cover all nicotine products. Currently, for novel nicotine products other than e-cigarettes, there are:

- No age of sale regulations so they can be sold to anyone, as well as being handed out free.
- No standardised regulatory requirement for information on packaging to provide information to consumers
- No controls on their advertising, promotion and sponsorship – these products are being promoted online via influencers, free samples and competitions
- No limits on nicotine content – some of them are very high strength, much higher than allowed by the regulations for e-cigarettes.
- No regulation of contents or ingredients – other than that required for them to conform to general product safety rules

The regulations need to be revised to include not just nicotine pouches but any novel nicotine products, as this is a market which is likely to continue to evolve.

We also believe that more independent research is needed to determine what, if any, role such products can play in tobacco control and for broader public health.

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

• Yes

- No
- Don't know

Please explain your answer and provide evidence or your opinion to support further development of our approach. (maximum 300 words)

Young people tend to have lower disposable income and to be more price sensitive than adults, and increasing the price of 'disposable' vapes through taxation should

therefore reduce the number of young people vaping. ASH and the SPECTRUM public health research consortium recommended that this should be implemented in the form of an excise tax for vaping products which is zero-rated for refillable/rechargeable products – to maintain their affordability in comparison to tobacco – and, for single use products, set at a level which increases their price significantly.

As well as deterring youth vaping, making ‘disposable’ vapes less affordable should also help nudge adult smokers looking to switch towards re-usable products which will be less damaging to the environment. Making vapes subject to excise taxes would also give greater powers and controls to HMRC and Border Force on the importation of vapes and vaping products and to prevent illegal vapes entering the country.

It is important that vaping remains more affordable for adults than smoking. Any new tax needs to be calibrated to ensure that tobacco remains the most expensive product.

How best to implement such a tax therefore needs careful consideration to avoid unintended consequences which is why ASH recommends the setting up of a working group (see answer to Q15)

## **Enforcement**

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

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.

### **• Yes**

- No
- Don't know

Please explain your answer and provide evidence or your opinion to support further development of our approach. (maximum 300 words)

Taking forward prosecutions for underage sales can be challenging for resource-limited local authorities, and fixed penalty notices (FPNs) are a welcome innovation. ASH recommends that non-payment of a FPN can be enforced via the Magistrate's Court rather than becoming a civil debt to the local authority, given that the resources needed to pursue non-payment can often be greater than cost of the penalty itself. ASH recommends that Trading Standards colleagues are involved in policy development from the outset to ensure that all relevant factors

are taken into account. For instance the question of whether the FPN is levied on the individual or the business.

ASH would also welcome broader consideration of the tools and penalties available for breaches of other tobacco and vape regulations to ensure that they provide a sufficient level of deterrent.

From a broader perspective, enforcement and regulatory partners are crucial in the journey towards creating a smokefree generation and enforcement of tobacco legislation is crucial. ASH welcomes the commitment from the Government to increase funding for tobacco enforcement and we look forward to the publication of the refreshed national illicit tobacco strategy, due to be published shortly. It is vital that this additional funding for enforcement is sustained.

There are additional regulatory options that we would encourage the Government to consider in its plan to 'Stop the Start' including introducing a licensing or enhanced registration scheme for retailers and revising regulations to enable notification fees to be used for enforcement purposes. (For more detail see the uploaded document from ASH)

ASH also supports consideration of the benefits of pooling budgets at a supra local or regional level for Trading Standards services in order to support cross-boundary working and to maximise limited resources.

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

- £100
- £200
- Other

Please explain your answer and provide evidence or your opinion to support further development of our approach. (maximum 300 words)

The level at which FPNs are set needs to be sufficiently high to provide a deterrent against underage sales. ASH also recommends an appropriate sliding scale and/or the ability to take alternative enforcement action for persistent offenders. The amount of the penalty should be calibrated according to whether it is to be applied to the individual responsible for the sale, or to the business. It is not clear whether both options are under consideration and this needs to be clarified.

Furthermore the TRPR and Tobacco Products (Traceability and Security Features) Regulations need to be revised to allow for publication of data, as well as for removal of the right to purchase tobacco (Economic Operator ID deactivation) for underage sales of tobacco as well as for sale of products which do not meet regulatory standards. (For more detail see the uploaded document from ASH)

Trading Standards engagement in policy development is vital to ensure that the regulations are appropriate, effective and enforceable.

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

- £100
- £200
- Other

Please explain your answer and provide evidence or your opinion to support further development of our approach. (maximum 300 words)

The level at which a FPN is set needs to be sufficiently high to provide a deterrent against underage sales. ASH also recommends an appropriate sliding scale and/or the ability to take alternative enforcement action for persistent offenders.

Furthermore the amount of the penalty should be calibrated according to whether it is to be applied to the individual responsible for the sale, or to the business. It is not clear whether both options are under consideration and this needs to be clarified.

ASH supports the adoption of a retail licensing/enhanced registration scheme for vaping products to aid enforcement. (For more detail see the uploaded document from ASH)

Trading Standards engagement in policy development is vital to ensure that the regulations are appropriate, effective and enforceable.