

# **Consultation response on behalf of ASH and SPECTRUM Tobacco and related products legislation introduced between 2015 to 2016: reviewing effectiveness**

**Published 29 January 2021 by DHSC and closes at 11:59pm on 19 March 2021**

## **Respondents**

This consultation response is on behalf of Action on Smoking and Health (ASH) and SPECTRUM.

SPECTRUM is a public health research consortium of academics from 10 UK universities and partner organisations funded by the UK Prevention Research Partnership.

ASH is a public health charity set up by the Royal College of Physicians in 1971 to advocate for evidence-based policy measures to reduce the harm caused by tobacco. ASH receives funding for its full programme of work from the British Heart Foundation and Cancer Research UK.

Neither ASH nor SPECTRUM have any direct or indirect links to, or receive funding from, the tobacco industry, except for nominal shareholdings in Imperial Brands and BAT for research purposes.

## **Scope of our response**

The consultation document states that: *“The scope of this consultation concerns TRPR and SPoT only and provides an opportunity to provide feedback on the effectiveness of the legislation in achieving its objectives along with any unintended consequences that may have occurred.”*

And that *“Great Britain no longer has to comply with the EU’s Tobacco Products Directive and there is opportunity to consider, in the future, further regulatory changes that help people quit smoking and address the harms from tobacco. Any changes to do so will be based on robust evidence and in the interests of public health. This review may help to consider some of the potential changes to be considered.”*

Therefore our response covers both the effectiveness of the current regulations and proposals for how they can be strengthened. Our answers strongly support the regulations, while illustrating loopholes and how they can be fixed. This is essential if the increased rate of decline in smoking rates needed to deliver the Government’s Smokefree 2030 ambition is to be achieved. The Smokefree 2030 ambition is supported by 74% of the population, and is backed up by high levels of support for a wide range of government action. (Yougov 2020)

## **Health text and picture warnings across tobacco products**

**Question 1: How far do you agree or disagree that the introduction of rotating combined (photo and text) health warnings on cigarette and hand rolling tobacco has encouraged smokers to quit?**

**Strongly agree**

There is evidence that rotating combined (photo and text) health warnings on cigarettes and hand rolling tobacco encourage smokers to quit and deter young people from smoking. However, as this policy was introduced at the same time as a range of measures it is difficult to distinguish the specific impact of this measure. And to deliver the enhanced decline in smoking rates needed to achieve the Government's Smokefree 2030 ambition we now need to go further.

Since Brexit implementation date on 1 January, GB is using the Australian warnings, but not at the Australian size. (DHSC 2021) Using the Australian warnings was a good interim step, however, the limited number of warnings means they are not currently being rotated, as was the case previously. Rotation is essential to maximise the impact on smokers. (Noar et al)

There are also additional subject areas for warnings which extend beyond physical health which could be included. Evidence on the relationship between mental health and smoking is increasing and health warnings which explain that mental health could improve on stopping smoking should be considered. (Brose et al 2020; Taylor et al 2021). The cost of smoking is also an important motivator, with nine out of ten smokers in England who made a quit attempt saying price was a reason for making the attempt. (ITC project 2018)

**Recommendations:**

1. The regulations should be amended to increase the size of the Graphic Health Warnings to 75% on the front and 90% on the back in line with Australian regulations.
2. The Department of Health and Social Care (DHSC) should develop its own suite of 3 sets of 14 warnings which can be rotated in line with best practice.
3. The new images and warnings need to be developed and consumer tested on adults and teenagers before being adopted and implemented.

**Question 2: How far do you agree or disagree that the introduction of rotating combined (photo and text) health warnings on cigarette and hand rolling tobacco has deterred young people from smoking?**

**Strongly agree**

As per answer to Q1 above.

**Question 3: Should all tobacco products have a combined (photo and text) health warning on their packaging?**

**Strongly agree**

To help deliver the enhanced decline in smoking rates needed to achieve the Government's Smokefree 2030 ambition we now need to go further and include combined warnings on all products, including herbal cigarettes and smokeless tobacco products.

**Recommendations:**

4. All tobacco products, and herbal cigarettes on sale in the UK, should have a combined photo and text health warning and plain, standardised packaging, as all these products cause serious harm and death to consumers.

5. Accessories which are used for smoking, including packages of rolling papers, and filters, should be regulated in the same way as tobacco products, prohibiting advertising and requiring a combined photo and text health warning and plain, standardised packaging.

## **Prohibition in characterising flavours, such as menthol in cigarettes and hand rolling tobacco (HRT)**

### **Question 4: How far do you agree or disagree that the prohibition of characterising flavours has helped smokers quit smoking?**

#### **Disagree**

The ban on flavours was introduced because there is good evidence that flavours, particularly menthol, the most widely used flavour in the UK, make it easier to start smoking and harder to quit. (ASH 2020) In principle therefore this policy will have contributed to reductions in uptake and increase in quitting.

However, data from UCL's Smoking Toolkit Study, a representative survey of current smokers (18+) in England found that a substantial proportion (just under a fifth) of current smokers in England reported menthol cigarette smoking between July-January 2020/2021. There was no decline in this proportion across the period, suggesting that smokers of menthol cigarettes mitigated the impact of the ban by a variety of means, such as with legal menthol accessories. current smokers (18+) in England.

Limiting the prohibition to 'characterising flavours' has made it easy to circumvent and complex to oversee. (Krüsemann et al 2018) The purpose of flavourings is to make cigarettes more appealing and easier to smoke, whether they are 'characterising' or not is irrelevant, as well as setting a standard which is difficult to measure. The ban was also possible to undermine in that it was restricted to cigarettes and hand rolling tobacco. Tobacco companies have used these loopholes in the regulations to introduce menthol cigarillos and accessories designed to add a menthol flavour. (Hiscock, Silver et al 2020, Evans-Reeves et al 2021)

#### **Recommendations:**

6. The ban on flavours should be extended to:
  - a) all smoked products, in particular cigarillos which are designed to be a cigarette substitute; and
  - b) smoking accessories such as filters and cards which have been designed to enable smokers to add flavour to their cigarettes.
7. All flavourings should be prohibited as additives, not just 'characterising' flavours to prevent the industry from using the lack of precision in this definition to circumvent the flavour ban.

#### ***For examples see:***

[Imperial Tobacco supports menthol smokers with New Crush launch | Talking Retail](https://www.imperialtobacco.com/news/menthol-smokers-with-new-crush-launch)

<https://inews.co.uk/news/health/menthol-cigarettes-ban-replacements-new-dual-jti-investigation-menthol-443132>

<https://www.thesun.co.uk/news/10662092/new-rizla-cards-menthol-cigarette-ban-slammed/>

<https://www.bloombergquint.com/business/eu-menthol-ban-tobacco-firms-offer-alternatives-to-cigarettes>

**Question 5: How far do you agree or disagree that the prohibition of characterising flavours has deterred young people from taking up smoking?**

As per answer to Q4 above.

**Regulate electronic cigarettes and associated refill cartridges (notification of placing on the market, adverse event monitoring, product requirements, information)**

**Question 6: How far do you agree or disagree that the current regulations on e-cigarettes have been proportionate in protecting young people from taking up use of these products?**

**Agree**

The overall trend in tobacco use over time in both adults and children has been downwards from 2010 onwards when e-cigarette use became widespread among adult smokers and ex-smokers:

- Regular smoking (at least one cigarette a week) among children 11-15 years old in England was: 5.0% in 2010; 3.1% in 2014; and 2.1% in 2018, the most recent year for which there are data. (NHS Digital SDD 2018)
- The most recent available data on smoking prevalence among 16 and 17 year olds in England are from the Smoking Toolkit Study, carried out since 2006, which shows that smoking prevalence fell by 5.1 percentage points between 2015 and 2019, from 13.8% to 8.7%. (Beard et al under review)
- Smoking prevalence among all adults 18 and over in the UK was 20.1% in 2010, falling to 14.1% in 2019. The most rapid rate of decline since 2010 has been among 18-24 year olds, falling from 25.8% in 2010 to 16.0% in 2019. (Office for National Statistics, Adult Smoking Habits 2019)

Prevalence of vaping among youth has increased over time to 5% among 11-18-year olds in England in March 2020; another survey reports 8% vaping among 16-19-year-olds in England in 2019. However, the vast majority of young people have never tried vaping (83%) and this has remained stable since 2017. Also, very few (0.8% to 1.3%) who have never smoked are vaping and the most commonly, those who had ever tried vaping had tried smoking first. (McNeill et al 2021)

At the same time, misperceptions of the relative harm of vaping compared with smoking are increasing and in 2020, only 43% of 11-18-year olds were aware that vaping is less harmful than smoking, increasing the risk of use of a more harmful product. (McNeill et al 2021)

Concerns have been raised, particularly in the US, around the role of flavours in attracting youth to e-cigarette use. However, there is no evidence that flavours have been particularly influential in attracting youth in GB to vape, with the most frequent reason cited 'Just to give it a try' (49.8%). 'I like the flavours' was only cited by 13.4%, and this was a less common answer among never smokers (6.4%). (ASH 2021)

On the other hand, a recent observational study indicated that vapers who used sweet flavoured e-cigarettes were more likely to transition away from cigarette smoking and quit cigarette use at least in the short term compared to those who used tobacco or unflavoured nicotine vaping products (Li et al, 2021). This study suggests that policies to restrict sweet flavours to protect youth may negatively effect adult smokers wishing to quit.

ASH together with King's College London and the academics at the University of Waterloo is carrying out research into the impact of packaging design on the appeal of products to youth and to adults. The results of this research will not be available before the close of the consultation, but will be available shortly and should be used to inform any decisions the government makes on whether regulations could be revised in a way that is proportionate to better protect young people.

**Recommendation:**

8. The DHSC should review whether e-cigarette packaging requirements could be introduced to reduce the attractiveness of e-cigarettes to youth while not undermining their appeal to adult smokers.

**Question 7: How far do you agree or disagree that the current regulations have ensured that e-cigarettes are available for those smokers who wish to switch to these products?**

**Agree**

We agree that the current regulations have ensured e-cigarettes are available as consumer products on general sale in retail outlets and online for smokers who wish to switch to these products.

Most adult vapers use refillable products ('tanks, or 'open' types). A recent study found that people who were using such models were over five times more likely to achieve abstinence from tobacco smoking compared to those using no quitting aids. People who used a disposable or cartridge e-cigarette daily were three times more likely to quit for one month, compared to those using no help. Daily use of e-cigarettes was also more effective for quitting than other evidence-based methods of quitting showing the importance of ensuring e-cigarettes are available to smokers. (McDermott et al, 2021). In our view it is important that a range of e-cigarette models remain on the market, and the recommendation to the WHO Executive Board that 'open systems' should be banned is not supported by the evidence. (WHO 2020)

Lastly, COVID-19 restrictions which forced the closure of vape shops during lockdowns limited access for those wanting to buy e-cigarettes, compared to the unrestricted access to much more harmful combustible tobacco products. Combustible tobacco cigarettes remain the most used nicotine products, and are available everywhere through supermarkets, off-licences and small shops which remained open throughout the COVID-19 pandemic. These outlets sell only a limited range of vaping products, which do not include the most effective tank system e-cigarettes, which are also cheaper to use and are used by three quarters of current vapers. Furthermore, because e-cigarettes are not considered essential products, production and distribution online was also threatened as this work was not considered essential either.

**Recommendations:**

9. 'Open system' e-cigarettes should not be prohibited as this would remove from the market the type of e-cigarettes most widely used by vapers, and most effective in helping smokers switch.
10. E-cigarettes should be classified as essential products allowing production, distribution and retail sale of e-cigarettes to continue when COVID-19 restrictions are imposed.

### **Question 8: What effect do you think the regulations have had on smokers considering switching to e-cigarettes?**

#### **Neither agree nor disagree**

E-cigarettes remain the most popular type of support used by smokers attempting to quit smoking. The most commonly given reasons for vaping are all related to quitting or reducing smoking or maintaining smoking abstinence. The proportion of vapers who concurrently smoke (often described as dual users) continues to decline, depending on the survey, 38% to 51% of vapers in England were concurrently smoking. In 2020, 27.2% of people used a vaping product in a quit attempt in the previous 12 months. This compares with 15.5% who used NRT over the counter or on prescription (2.7%), and 4.4% who used varenicline. (McNeill et al 2021, McDermott 2020) Nearly half of a cohort of smokers over an 18 month period in the UK continued smoking while having tried to reduce harm or quit. Use of alternative nicotine products alongside smoking was associated with higher probabilities of becoming an ex-smoker. (Simonavicius et al 2020)

In time-series analyses of quarterly population trends from the Smoking Toolkit Study, changes in prevalence of e-cigarette use in England have been positively associated with the overall quit rates and quit success rate. It was estimated that this corresponded to between 50,000 to 70,000 additional people stopping smoking in England in 2017 over and above what could otherwise have been expected. (Beard et al 2020)

It is clear therefore that e-cigarettes are effective in helping smokers to switch out of smoking, but do not currently achieve their full potential, for example, only 5% of quit attempts supported by a stop smoking service use an e-cigarette. Quit rates continue to be observed to be higher when the quit attempts involve the use of vaping products, with people using a licensed medication and a vaping product one after another. (McNeill et al) An RCT of e-cigarettes compared to NRT in a stop smoking service setting also found that e-cigarettes were more effective for smoking cessation than nicotine-replacement therapy, when both products were accompanied by behavioural support. (Hajek 2019)

E-cigarettes have been demonstrated to be a highly effective quitting aid, but one that smokers need greater encouragement to use. In 2020 just under a third of smokers had never tried e-cigarettes, and for the first time since ASH started monitoring use in 2010 the number of e-cigarette users in Britain went down rather than up year-on-year, falling from 3.6 to 3.2 million, a fall of 12%. (ASH 2020)

This decline was associated with a significant increase in the misperceptions of the relative risk of smoking compared to vaping. Between implementation of the regulations in 2016 and 2019 the proportion of the adult population thinking that e-cigarettes are more or equally harmful as smoking

was stable at around 25%, with around 45% thinking they were less or a lot less harmful. However, in 2020 the proportion thinking they were more harmful jumped to 37% while the proportion thinking they were less harmful fell to 39%. The proportion of current smokers who have never tried e-cigarettes who believe they are more or equally harmful as cigarettes increased to an even greater extent by 15 percentage points between 2019 and 2020 from 27% in 2019 to 42% in 2020.

The likely driver for this change in public perception is the impact of the media coverage of an outbreak of serious lung injury to vapers in the US, called EVALI. (Tattan-Birch et al 2020) The number of hospital admissions from EVALI peaked in September 2019 and by February 2020 the US had reported 2,807 hospitalised cases and 68 deaths. The cause of this outbreak has since been identified as vitamin E acetate used to adulterate cannabis containing e-liquids the media coverage of the initial outbreak was far more prominent than the subsequent explanation or the fact that both vitamin E acetate and THC containing liquids are banned under UK rules, and the UK has not seen an outbreak of EVALI. An analysis of e-cigarette product notifications (submitted by manufacturers in line with TPD requirements) indicates that, in line with the ban, Vitamin E acetate and THC are not present in licit products on the UK market (Nyakutsikwa et al 2019).

Misperceptions of the relative harm of vaping compared with smoking are increasing among smokers, who would benefit from switching. In 2020, only 29% of smokers in England were aware that vaping is less harmful than smoking, increasing the risk of continued use of the more harmful product. There is some indication that these misperceptions are even stronger among more disadvantaged groups in the population, further supporting health inequalities. (McNeill et al 2021)

If e-cigarettes are to be used to their full potential as a quitting aid the Government needs to do more to encourage their use by smokers, by educating the public about the reduced relative risks of vaping compared to smoking.

Around 16% of current vapers said that they were using short-fill vaping products which are larger (>10ml) bottles of flavoured nicotine free liquids that leave space for a nicotine shot which is sold separately (PHE, 2021). The short fill liquid products are not subject to TRPR regulations because they do not contain nicotine. It is unclear whether the constraints on the sizes and volumes are necessary. One study indicated that several months after full implementation of TRPR awareness of the product regulations was low. Whilst most vapers used compliant products, their use was not associated with the likelihood of subsequent smoking. (Lee et al, 2019).

Health warnings, such as those implemented by the TPD, may help to prevent non-smokers from e-cigarette use, but it is possible that they may inadvertently deter smokers from initiating use and substituting their tobacco smoking for e-cigarettes use if their content is deemed too negative. (Cox et al 2018, Kimber et al 2018) Research which compared the effects of the current health warnings (“This product contains nicotine which is a highly addictive substance. [It is not recommended for non-smokers.]”) and a comparative harm message (“Use of this product is much less harmful than smoking” [COMP]) on smokers’ and non-smokers’ perceptions and behavioural intentions. The COMP message was more effective in reducing harm perceptions and increasing use intentions in smokers. That COMP did not increase use intentions in non-smokers suggest that such exposures may potentially act as an effective harm reduction tool without resulting in increased uptake among non-smokers. (Kimber et al 2019)

#### **Recommendations:**

11. Local authorities should continue to fund and provide stop smoking services and all stop smoking services should have a consistent and supportive approach to the use of vaping products as part of a quit attempt.
12. The government should fund behaviour change campaigns to address smokers' misperceptions of the risks of vaping among smokers and encourage smokers to switch.
13. DHSC should commission more research to investigate:
  - a) the impact of restrictions on the volume of cartridges and tanks and refill bottles introduced through the TRPR before deciding whether any changes should be made.
  - b) how current health warnings on e-cigarettes could be revised to further encourage their use by smokers, while not increasing the appeal to youth.

**Question 9: Do you consider the restrictions on e-cigarette advertising to be an effective way to discourage young people and non-smokers from using e-cigarettes?**

**Agree**

However, there are loopholes in the law that need filling.

On the one hand public health campaigns promoting switching are being denied access to Facebook, claiming that they breach the rules (personal communication from Fresh North East) while on the other the prohibition of advertising of e-cigarettes is not being fully enforced on social media.

Paying for social media influencers through channels such as Instagram and Tik Tok to promote e-cigarettes with content which goes beyond factual information is a breach of Regulation 43 of the TRPR, and of rule 22.12 of the CAP code, (ASA ruling on BAT). However, tobacco companies are continuing to advertise in this way. (Guardian 2020, Bureau of Investigative Journalism 2021, Observer 2021, Stead et al 2021) Enforcement with such channels is extremely difficult for Trading Standards, and complaints by ASH and CTFK, subsequent to the original BAT finding, have not been followed up by the ASA. This is concerning as more than a third of 16 to 19-year-olds believed that e-cigarette marketing made vaping seem either appealing or very appealing, despite the introduction of the CAP Code Rules (22.9 -22.11) to limit appeal to young people and children (Stead et al 2021).

**Recommendations:**

14. The DHSC together with CAP/BCAP should review the e-cigarette advertising rules to determine how the regulations could be clarified to ensure all advertising channels understand that campaigns by public health organisations promoting switching to e-cigarettes, or support for such campaigns, are not prohibited.
15. The CAP rules should specify that e-cigarette manufacturers' and retailers' social media profiles for their products must be limited to factual information which can only be promoted or distributed to consumers who have opted in to receive the message they contain.
16. E-cigarette adverts should be required to specify that e-cigarettes should only be used by current or former smokers as an alternative to smoking.
17. The DHSC should commission research to better understand what regulations would be most effective at limiting the appeal of e-cigarette adverts to youth. Further guidance on the use of imagery and the depiction of people in e-cigarette adverts is also needed.



## Novel tobacco products

**Question 10: How far do you agree or disagree that the requirements of TRPR on novel tobacco products are proportionate?**

**Neither agree nor disagree**

There is insufficient independent evidence as yet to determine whether the requirements of the TRPR on novel tobacco products are proportionate. (COT 2017, PHE 2018)

## Enforcement

### Penalties and enforcement of the regulations

**Question 11: Do you agree or disagree that the penalties for a breach of the regulations are an effective deterrent to ensure compliance with the regulations?**

**Disagree**

The penalties for a breach of the regulations are necessary but not sufficient to ensure compliance particularly at retail level. For example three-quarters of 11-17 year olds reported buying their vaping products, albeit from a variety of places including buying them from friends or relatives. (McNeill et al 2021) Measures need to be put in place, as recommended below, to enable easier enforcement of current penalties, as penalties don't act as a deterrent if they're not enforced.

Enhanced penalties for breaking the law are supported by small retailers. ASH commissioned a survey of the views of small tobacco retailers (sample size 558) about tobacco and related regulations which found that the majority of retailers strongly agreed that the following enhanced enforcement measures could help ensure retailers don't sell illicit tobacco or sell to underage smokers:

- **71% strongly agreed on having a tobacco licence which could be removed if retailers break the law** (net agree 84%, net disagree 9%, neither agree/disagree or don't know 7%)
- **55% strongly agreed on removal of alcohol licences from retailers who break tobacco laws** (net agree 66%, net disagree 25%, neither agree/disagree or don't know 9%)
- **65% strongly agreed on larger fines for breaking tobacco laws** (net agree 77%, net disagree 16%, neither agree/disagree or don't know 7%)
- **67% strongly agreed on strengthening of Challenge 21 and Challenge 25 schemes** (net agree 78%, net disagree 14%, neither agree/disagree or don't know 7%)
- **66% strongly agreed on more regular checks by trading standards** (net agree 81%, net disagree 10%, neither agree/disagree or don't know 9%)
- **72% strongly agreed on quicker action when offences take place** (net agree 84%, net disagree 5%, neither agree/disagree or don't know 11%)

## Recommendations:

18. Powers should be given to trading standards officers to issue on the spot fines.
19. Mandatory 'Challenge 25' regulations should be implemented for all Age Restricted products as is the case in Scotland. Retailers in England are encouraged to implement this voluntarily, but that allows for inconsistencies which undermine its effectiveness as a compliance and enforcement tool.
20. Specific exemption from RIPA should be allowed for underage sales enforcement.
21. Powers should be given to trading standards officers to enter dwellings which are being used to store and sell illegal tobacco.
22. A mandatory public health licensing system should be implemented for tobacco retailers with bans for anyone caught making underage sales, or selling illicit tobacco.

## Other question

### Question 12: How far do you agree or disagree that there has been an economic impact of TRPR, either positive, negative or both?

#### Agree there has been a positive economic impact

By contributing to the decline of smoking prevalence, by encouraging quitting and discouraging uptake, the TRPR has a positive economic impact on society by increasing productivity and employability and contributing to Government manifesto commitments to increase healthy life years.

There are always concerns, however, about the potential for regulations to have a negative impact on small businesses, in this instance independent retailers. To address this ASH commissioned a survey of the views of small tobacco retailers about tobacco and related regulations to provide evidence for the Post Implementation Reviews on tobacco regulations introduced between 2010-2015 and for this consultation on the regulations introduced between 2015-16. The survey included asking retailers about current regulations and additional regulations ASH and others recommend be put in place by the Government.

The survey was conducted among retailers of small shops in England which sold tobacco by a market research agency (NEMS). Computer assisted telephone interviews were conducted between the 6th and 21st August 2019. Interviewees were owners or managers of these small shops. 558 retailers were interviewed, around half were convenience stores or local supermarkets, but respondents also included off-licences, newsagents, petrol stations, and tobacconists. The top line results are summarised below.

The majority of small retailers supported the existing tobacco regulations as well as increasing the age of sale to 21:

- **61% support prohibition of tobacco displays** (26% oppose, 13% neither support/oppose or don't know)
- **52% support restrictions on display of tobacco prices** (35% oppose, 13% neither support/oppose or don't know)

- **51% support standardised “plain” packaging of tobacco packs** (36% oppose, 12% neither support/oppose or don’t know)
- **64% support minimum pack sizes for cigarettes and rolling tobacco** (27% oppose, 8% neither support/oppose or don’t know)
- **72% support regulation of e-cigarette content and packaging** (9% oppose, 18% neither support/oppose or don’t know)
- **84% support age of sale for e-cigarettes of 18** (7% oppose, 8% neither support/oppose or don’t know)
- **52% support increasing the age of sale for cigarettes to 21** (39% oppose, 9% neither support/oppose or don’t know)

The majority of small retailers said the current regulations had no impact on their business, either positive or negative:

- **71% said prohibition of tobacco displays had no impact** (19% negative, 5% positive, 4% don’t know)
- **72% said restrictions on display of tobacco prices at point of sale had no impact** (20% negative, 4% positive, 4% don’t know)
- **67% said standardised “plain” packaging of tobacco packs had no impact** (24% negative, 5% positive, 3% don’t know)
- **61% said minimum pack sizes for cigarettes and rolling tobacco had no impact** (24% negative, 12% positive, 3% don’t know)
- **73% said regulation of e-cigarette content and packaging had no impact** (5% negative, 8% positive, 10% not applicable, 5% don’t know).

## Anything else on TRPR?

**Question 13: Is there anything else you would like to share on negative or positive impacts the regulations have had on topics not covered above? If so, please explain and include any evidence and research you may have to back your response.**

**Yes**

There are loopholes in the current legislation enabling youth access in particular to nicotine products, which need to be filled.

The loophole which allows free distribution of e-cigarettes to under 18s despite sales being illegal must be closed immediately. The relevant wording in the TRPR section 38(4) currently only makes pack features offering free distribution illegal, not the distribution of free product in itself, stating “The unit pack or container pack in which an electronic cigarette or refill container is, or is intended to be, presented for retail sale may not contain any element or feature which suggests economic advantage by including printed vouchers or offering discounts, free distribution, two-for-one or other similar offers.” (TRPR 2016)

All e-liquids should be covered by the TRPR regulations, not just those containing nicotine. 0% nicotine e-liquids are not included in the regulations requiring them to be notified to the MHRA and

to meet minimum standards for safety and quality. Furthermore 0% vaping liquids can be sold legally to children, there are no limits on size and they are often sold in packaging which is particularly attractive to children. These 0% liquids are sold as “shortfills” which are specifically designed to have a 10 ml legislation compliant-nicotine shot added to them and as the examples below show, ‘free nic shots’ are often given away with the shortfill. As there are no age restrictions on nicotine products given away for free, this means that selling nicotine free shortfills with ‘free nic shots’ to underage consumers is totally legal.

**For examples see (accessed 16 March 2021)**

<https://www.vapesuperstore.co.uk/pages/guide-to-short-fills>

<https://www.vapesuperstore.co.uk/collections/short-fill-e-liquids>

<https://www.ubervape.co.uk/breakfast-club---marshmallow-charms-120ml-e-liquid-shortfill-36234-p.asp>

<https://vapebargains.co.uk/tag/free-nicotine-shots/>

The TRPR only covers e-cigarettes and novel tobacco products, not novel nicotine products like pouches. That means that for novel nicotine products there are:

- No age of sale regulations so they can be sold to consumers of any age, 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.

**For examples see (accessed 16 March 2021)**

<https://www.instagram.com/velo.unitedkingdom/>

[https://www.instagram.com/nordicspirit\\_uk/b](https://www.instagram.com/nordicspirit_uk/b)

- 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 there are other nicotine products already being heavily promoted in other markets, and this is a market which is likely to continue to evolve. For example, nicotine gum, a product called Lucy is being heavily promoted in the US.

**See (accessed 16 March 2021)**

[This advertisement seems to be trying to convince people, who never smoked or vaped, to start using nicotine gum. : assholedesign \(reddit.com\)](#)

And nicotine toothpicks are also on sale in the US:

**See (accessed 16 March 2021)**

[nicotine toothpicks - Bing video](#)

Since May 2016 manufacturers have been required to notify PHE of all tobacco products to be sold in the UK and MHRA of e-cigarette products to be sold in the UK via an EU system. Notification was a requirement of the TPD. However, research using the submissions data on vaping products up to October 2017 (Nyakustsikwa et al 2021) indicates that the reporting of these data is highly unstandardised. Notification of products intended for sale in Great Britain is now via a domestic

system. Standardising data collection will increase confidence in future notifications and ensure that comparative analysis of the data can be carried out.

**Recommendations:**

23. The MHRA should be required to review the notification requirements for vaping products intended for sale in Great Britain and implement a standard process for notification to enable data analysis and product comparison.
24. The TRPR regulations should be revised to:
  - a) include prohibition of free samples of nicotine products;
  - b) regulate all novel nicotine products which do not have a medicinal marketing authorisation, not just e-cigarettes. This should include an age of sale of 18 for all such products; and
  - c) to require notification to the MHRA of 0% nicotine e-liquid in the same way as e-liquid containing nicotine.

**The Standardised Packaging of Tobacco Products Regulations 2015**

**Question 14: How far do you agree or disagree that the requirements on the packaging and labelling of tobacco products have been an effective way to protect young people from taking up smoking?**

**Agree**

The regulations have delivered the desired primary outcomes of reducing the perceived attractiveness of cigarette packs among young people, and enhancing the salience of health warnings. While the evidence to date is limited plain standardised packaging does appear to be deterring youth from taking up smoking. (Aleyan 2020, Opazo Breton et al 2018, Moodie 2019, Moodie 2021)

However, to help deliver the enhanced decline in smoking rates needed to deliver the Government's Smokefree 2030 ambition we now need to go further, as best practice has moved on since the standardised packaging regulations were passed in 2015. A review of the regulations in place around the world in 2019 recommended the following improvements to the legislation as currently implemented in the UK, which we support. (Moodie et al 2019)

Furthermore, there is a growing body of research evidence supporting the effectiveness of what are known as 'dissuasive cigarettes', particularly in making cigarettes less attractive to younger adolescents and never smokers. Dissuasive cigarettes could be the same unattractive colour as tobacco packs (Pantone 448C) and carry health warnings such as *Smoking Kills*. See also answer to Q18.

An evaluation of tobacco industry activity in the UK leading up to standardised packaging (Evans-Reeves et al 2019) noted, in addition, that the tobacco industry made innovations to filters which could enhance product attractiveness, and that branding continues to be used in places visible to retailers such as multipack outers and trade magazines. We recommend reviews of (a) the role of filters in cigarettes, particularly given their environmental impact,

and (b) of whether branding visibility to retailers should be prohibited. (Evans-Reeves et al 2021, CRUK 2020)

**Recommendations:**

25. To enhance the protection of children the following changes to standardised packaging regulations should be implemented:
- a) A shorter sell-through period, as in Australia and New Zealand, given that tobacco companies used the extended (12-month) sell-through period granted in the UK and Norway to continue to promote their products;
  - b) pack dimensions which prevent the slimmer pack formats found in the UK and France;
  - c) fixed pack sizes for cigarettes and weights for rolling tobacco, as in New Zealand, to prevent tobacco companies from using pack size/weight to differentiate their brands or communicate value for money—a single fixed pack size for cigarettes and for rolling tobacco would be most effective;
  - d) only straight-edged flip-top packs for cigarettes, as in Australia and New Zealand, which are more consistent with the aims of plain packaging given that rounded and bevelled-edged cigarette packs are intended to increase appeal and shoulder boxes reduce health warning salience;
  - e) that the pack interior, including inner foil, be drab brown (Pantone 448C as per the outer wrapping);
  - f) that the main warning text is capitalised, centred and occupies all of the available space, as in Australia and New Zealand, to ensure the most effective display of this information;
  - g) a greater number of warnings in each set, a greater number of warning sets and frequent rotation, as in the UK prior to Brexit;
  - h) cigarette dimensions which prevent the slimmer cigarettes found in Australia, the UK, France and Norway; and
  - i) a ban on the use of colour descriptors within brand and variant names to halt existing practices, which potentially mislead consumers about product harm.
26. Furthermore DHSC should commission reviews of:
- a) the role of filters in cigarettes, and whether they should be prohibited; and
  - b) whether branding visibility to retailers should be prohibited.

**Question 15: How far do you agree or disagree that the requirements on the packaging and labelling of tobacco products have helped existing smokers quit?**

**Agree**

There is evidence that implementation of Standardised Packaging legislation was associated with switching to e-cigarettes, which helped existing smokers quit. (Opazo Breton et al 2020). Further, the decline of in-store tobacco sales (cigarettes and hand rolled tobacco combined) accelerated after standardised packaging was implemented whilst illicit tobacco

did not grow and thus did not replace store sales (Hiscock, Augustin et al 2020a). Standardised packaging was introduced in the context of tax increases and prices have risen which increases motivation to quit. (Hiscock, Augustin et al 2020b)

However, the revisions to the regulations recommended in answer to Q14 are recommended here too as they will also enhance the effectiveness of the regulations in helping existing smokers quit. Additionally there is evidence to support pack inserts as an additional behaviour change intervention which will help motivate smokers to quit.

The health harms warnings on the outside of the pack help motivate smokers to think about quitting. Pack inserts on the inside could be used to provide the best advice on how to succeed, providing complementary and cost-effective support to the smoking cessation services provided by local authorities and the NHS. This is a straightforward measure requiring a simple revision of the UK's standardised packaging legislation which currently prohibits pack inserts. Requiring the inclusion of government-mandated information about quitting in pack inserts is supported by 69% of adults in England with only 7% opposing. (YouGov 2020).

Pack inserts are:

- Easy and cheap to implement
- Targeted at current smokers
- Have already proved effective in Canada.

Canada has had a legal requirement for manufacturers to include educational material within cigarette packs since 2000. Canadian government mandated pack inserts highlight the benefits of quitting and provide tips on how to do so, and since 2012, the inserts have updated to include graphics rather than just text. Research into their impact has shown that while reading on-pack health warnings significantly decreased over time, reading inserts significantly increased, with more frequent reading of inserts associated with self-efficacy to quit, quit attempts and sustained quitting at follow-up. (Thrasher et al 2015 and 2016)

Focus group research by academics at the University of Stirling found that smokers, diverse in age, gender and social grade, supported the use of such inserts in the UK to encourage them to quit. (Moodie 2018)

### **Recommendations**

27. The SPoT regulations should be revised to require manufacturers to include educational pack inserts, with the content determined by the Government.

**Question 16: SPoT regulations apply to cigarettes and hand rolling tobacco. How far do you agree or disagree that SPoT regulations should be restricted to cigarettes and hand rolling tobacco (and not other tobacco products)?**

## **Strongly disagree**

We strongly disagree that the regulations should be restricted to cigarettes and hand rolling tobacco. The tobacco industry has introduced several innovations that exploited product exemptions (Evans-Reeves et al 2019).

- After a long term decline, sales of cigarillos are now growing: They are exempt from the all SPoT regulations except those relating to the health warning, they are relatively under-taxed compared with factory made cigarettes, and they are also exempt from the Minimum Excise tax. They have been marketed to retailers, and increasingly to smokers as close substitutes to cigarettes (e.g. by in the inclusion of filters, cigarette style tobacco, and cigarette brand names).
- In addition to menthol accessories mentioned previously, colourfully packaged slim, superslim and biodegradable papers have been introduced. Such accessories may communicate reduced harm to people or the environment, and naming products with such terms has been banned for tobacco products in TRPR legislation.
- Pipe tobacco has been marketed as hand rolled tobacco in order to circumvent minimum pack size restrictions.
- Standardised packaging for shisha tobacco should be implemented in a way that reflects the specific nature and use of the product (MacGregor Consulting Ltd 2020).

These examples illustrate that the restriction of SPoT legislation to cigarettes and hand rolled tobacco has allowed the tobacco industry to exploit loopholes and circumvent the ban. We recommend that the SPoT legislation is widened in future to cover all tobacco products and accessories. That would have the added advantage of future proofing legislation by allowing for the emergence of new tobacco products.

### **Recommendations:**

28. SPoT regulations should be applied to all tobacco products, as is the case in Australia, which led the way on plain packaging, as well as Ireland and New Zealand.
29. SPoT regulations should also be applied to accessories which are used for smoking, including packages of rolling papers, and filters.

## **Pack size**

### **The introduction of a minimum pack size of 20 cigarettes and the introduction of a minimum pack weight of 30 grams for hand rolling tobacco**

**Question 17: How far do you agree or disagree that the introduction of a minimum pack size or weight is an effective way to protect young people from taking up smoking?**

The cost of smoking is a key factor in deterring uptake and encouraging quitting, and young people are more price sensitive than adults. Minimum pack sizes have an impact on the minimum price of the product and were associated with increase in cigarette prices. Opazo-Breton 2018, Opazo Breton 2020)



Minimum pack sizes currently do not apply to cigarillos which, in addition, are still available in colourful branded packaging attractive to young people. Cigarillo packs' small size and their exemption from minimum excise tax halves their price compared to the cheapest packs of cigarettes increasing affordability for young people (Branston et al 2020).

**Recommendation:**

30. Fixed pack sizes should be required for cigarettes and weights for rolling tobacco, as in New Zealand, to prevent tobacco companies from using pack size/weight to differentiate their brands or communicate value for money—a single fixed pack size for cigarettes and for rolling tobacco would be most effective. (see recommendation in answer to Q14 above).
31. Fixed pack sizes should be required for all tobacco products, in particular cigarillos which are surrogate cigarettes.

**Appearance of cigarettes**

**The requirements for the appearance of cigarettes**

Cigarettes may only be white with a matt finish and any paper surrounding the end of a cigarette that is not designed to be lit may be coloured in such a way as to imitate cork. Text may be printed on the cigarette to identify the brand and variant name of the cigarette but must meet certain conditions around presentation.

**Question 18: How far do you agree or disagree that the requirements on the appearance of cigarettes are proportionate?**

**Disagree**

The current regulations do not go far enough in making cigarettes unappealing, particularly to young people. They need to be made less appealing in order to help deliver the enhanced decline in smoking rates needed to deliver the Government's Smokefree 2030 ambition.

**'Dissuasive cigarettes'**

There is evidence that smokers become inured to an extent to existing warnings and new techniques are needed to refresh their interest. Under consideration both in Canada, Australia and Scotland are what is known as 'dissuasive cigarettes' carrying health warnings. Requiring health warnings to be printed on cigarette sticks to encourage smokers to quit is supported by 68% of adults in England with only 8% opposing. (Yougov 2020).

There is a growing body of research evidence supporting their effectiveness. (Drovandi et al 2019, Gallopel-Morvan 2019, Hoek et al 2016, Moodie et al 2015, 2016, 2017, 2018 2019 and in press) It would be a simple matter to put messages such as 'Smoking Kills' or 'Smoking Causes Cancer' on every cigarette stick to reinforce the message every time a smoker takes a cigarette out of the pack to light up. This would also provide the clearest warning possible to children, who are not necessarily exposed to the unappealing packaging

and on-pack warnings when they experiment, not to start. This should also be required for smoking accessories such as cigarette papers, and filters, which are used with handrolling tobacco.

Alternative colours to white could be tested to see whether colour can be used to make cigarettes even less appealing.

#### **Recommendation:**

32. The regulations should be revised to standardise the size of cigarettes and to require all factory made cigarettes, rolling papers and other smoking accessories to carry anti-smoking messages.

### **Enforcement**

#### **Offences and enforcement of the regulations**

These regulations make it an offence to produce or supply tobacco products that have retail packaging that do not meet the provisions set out in the regulations, on the penalty on summary conviction would be imprisonment for a term not exceeding three months, or a fine of any amount, or both, or if convicted on indictment, would be liable to imprisonment for 2 years or a fine or both. These are enforced by Trading Standards Officers (or Environmental Health Officers in Northern Ireland).

#### **Question 19: Do you agree or disagree that the penalties for a breach of the regulations are an effective deterrent to ensure compliance with the regulations?**

##### **Disagree**

Our answer to, and recommendations for, this question are the same as those for Q11.

#### **Other question**

##### **Question 20: How far do you agree or disagree that there has been an economic impact of SPoT, either positive, negative or both?**

##### **Strongly agree**

By contributing to the decline of smoking prevalence, by encouraging quitting and discouraging uptake, the SPoT regulations have a positive economic impact on society by increasing productivity and employability and contributing to Government manifesto commitments to increase healthy life years.

There are always concerns, however, about the potential for regulations to have a negative impact on small businesses, in this instance independent retailers. Therefore ASH commissioned a survey of the views of small tobacco retailers about tobacco and related regulations to provide evidence for the Post Implementation Reviews on tobacco regulations introduced between 2010-2015 and for this consultation on the regulations introduced between 2015-16. In a survey of independent retailers carried out for ASH 67%

said standardised “plain” packaging of tobacco packs had no impact (24% negative, 5% positive, 3% don’t know). (NEMS 2019)

## Anything else on SPoT?

**Question 21: Is there anything else you would like to share on negative or positive impacts the regulations have had on topics not covered above? If so, please explain and include any evidence and research you may have to back your response.**

No

## References:

Aleyan et al. Evaluating the impact of introducing standardized packaging with larger health-warning labels in England: findings from adult smokers within the EUREST-PLUS ITC Europe Surveys, *European Journal of Public Health*, Volume 30, Issue Supplement\_3, July 2020, Pages iii91–iii97, <https://doi.org/10.1093/eurpub/ckaa053>

ASA ruling on British American Tobacco UK Ltd <https://www.asa.org.uk/rulings/british-american-tobacco-uk-ltd-G19-1018310.html>

ASH Factsheet: [Use of e-cigarettes \(vapes\) among adults in Great Britain](#). October 2020. Total sample size was 12,808 adults 18+ in Great Britain. Fieldwork was undertaken online by YouGov between 17th February 2020 and 11th March 2020. Respondents are weighted to be representative of GB population.

ASH Factsheet: [Use of e-cigarettes among young people in Great Britain, 2020](#). February 2021. Total sample size was 2,505 young people aged 11-18 years in Great Britain. Fieldwork was undertaken online by YouGov between 11<sup>th</sup> and 31<sup>st</sup> March 2020. Respondents are weighted to be representative of GB children aged 11-18 years.

ASH Media Advisory: [Ban on menthol flavoured cigarettes comes into force on 20 May 2020](#). 12 May 2020.

Beard E. West R. Michie S. Brown J. Association of prevalence of electronic cigarette use with smoking cessation and cigarette consumption in England: a time–series analysis between 2006 and 2017. *Addiction* May 2020. [Doi: 10.1111/add.14851](https://doi.org/10.1111/add.14851)

Beard E. Brown J. Shahab L. Association of quarterly prevalence of e-cigarette use with ever regular smoking among young adults in England: a time series analysis between 2007 and 2018. *PloS Med*. Under review.

Branston JR, Hiscock R, Silver K, Arnott, D., & Gilmore, A. Cigarette-like cigarillo introduced to bypass taxation, standardised packaging, minimum pack sizes, and menthol ban in the UK Tobacco Control Published Online First: 26 August 2020. doi: [10.1136/tobaccocontrol-2020-055700](https://doi.org/10.1136/tobaccocontrol-2020-055700)

Brennan E, Ilchenko E, Durkin SJ, et al Public support for introducing cigarette pack inserts in Australia. Tobacco Control 2021. doi: [10.1136/tobaccocontrol-2019-055519](https://doi.org/10.1136/tobaccocontrol-2019-055519)

Brose LS, Brown J, Robson D, McNeill A. Mental health, smoking, harm reduction and quit attempts - a population survey in England. BMC Public Health. 2020 Aug 14;20(1):1237. doi: 10.1186/s12889-020-09308-x. PMID: 32795286; PMCID: PMC7427923.

DSHSC Guidance. Packaging of tobacco products. [Information for retailers and distributors of tobacco products, enforcement agencies and the public on changes to tobacco packaging](https://www.gov.uk/government/publications/information-for-retailers-and-distributors-of-tobacco-products-enforcement-agencies-and-the-public-on-changes-to-tobacco-packaging). 4 January 2021.

The Bureau of Investigative Journalism. New products, old tricks? Concerns big tobacco is targeting youngsters. 21 February 2021 <https://www.thebureauinvestigates.com/stories/2021-02-21/new-products-old-tricks-concerns-big-tobacco-is-targeting-youngsters>

COMMITTEES ON TOXICITY, CARCINOGENICITY AND MUTAGENICITY OF CHEMICALS IN FOOD, CONSUMER PRODUCTS AND THE ENVIRONMENT (COT, COC and COM) Statement on the toxicological evaluation of novel heat-not-burn tobacco products. December 2017.

Cox, S., Frings, D., Ahmed, R., & Dawkins, L. Messages matter: The Tobacco Products Directive nicotine addiction health warning versus an alternative relative risk message on smokers' willingness to use and purchase an electronic cigarette. *Addictive Behaviors Reports*, 8, 136–139. 2018 <https://doi.org/10.1016/j.abrep.2018.09.006>

CRUK. Market and industry response to standard tobacco packaging in the UK Dec 2020 [https://www.cancerresearchuk.org/sites/default/files/cruk\\_summary\\_paper\\_-\\_market\\_and\\_industry\\_response\\_to\\_standard\\_tobacco\\_packaging\\_uk\\_-\\_december\\_2020.pdf](https://www.cancerresearchuk.org/sites/default/files/cruk_summary_paper_-_market_and_industry_response_to_standard_tobacco_packaging_uk_-_december_2020.pdf)

DHSC. Guidance: Packaging of tobacco products. Information for retailers and distributors of tobacco products, enforcement agencies and the public on changes to tobacco packaging. 4 Jan 2021. <https://www.gov.uk/government/publications/packaging-of-tobacco-products>

Drovandi A, Teague PA, Glass B, Malau-Aduli B. Do health warnings on cigarette sticks dissuade smokers and non-smokers? A focus group and interview study of Australian university students. *Psychol Res Behav Manag*. 2019;12:361–373. Published 2019 May 13. doi:10.2147/PRBM.S193754.

Evans-Reeves KA, Hiscock R, Lauber K, & Gilmore, A. B. Prospective longitudinal study of tobacco company adaptation to standardised packaging in the UK: identifying circumventions and closing loopholes *BMJ Open* 2019;9:e028506. doi: 10.1136/bmjopen-2018-028506

Evans-Reeves KA, Lauber K, Hiscock R. The 'filter fraud' persists: the tobacco industry is still using filters to suggest lower health risks whilst destroying the environment. *Tobacco Control*. In Production

Gallopel-Morvan K, Moodie C, Guignard R, Eker F, Beguinot E. Consumer perceptions of cigarette design in France: A comparison of standard, innovative (slim, pink) and plain cigarettes. *Nicotine & Tobacco Research*, 21, 911-917. Published 2019. doi: 10.1093/ntr/nty105

The Guardian. Legal loophole allows children to get free vape samples. 25 Oct 2020 <https://www.theguardian.com/society/2020/oct/25/legal-loophole-allows-children-to-get-free-vape-samples>

The Guardian. Tobacco giant bets £1bn on influencers to boost 'more lung-friendly' sales. 20 February 2021 [https://www.theguardian.com/business/2021/feb/20/tobacco-giant-bets-1bn-on-social-media-influencers-to-boost-lung-friendlier-sales?CMP=Share\\_AndroidApp\\_Other](https://www.theguardian.com/business/2021/feb/20/tobacco-giant-bets-1bn-on-social-media-influencers-to-boost-lung-friendlier-sales?CMP=Share_AndroidApp_Other)

Hartmann-Boyce J, McRobbie H, Lindson N, Bullen C, Begh R, Theodoulou A, Notley C, Rigotti NA, Turner T, Butler AR, Fanshawe TR, Hajek P. Electronic cigarettes for smoking cessation. *Cochrane Database of Systematic Reviews* 2020, Issue 10. Art. No.: CD010216. DOI: 10.1002/14651858.CD010216.pub4. Accessed 13 March 2021.

Hajek et al. A Randomized Trial of E-Cigarettes versus Nicotine-Replacement Therapy. *N Engl J Med* 2019; 380:629-637 DOI: 10.1056/NEJMoa1808779

Health Canada. [Regulatory impact analysis statement \(Tobacco Products Information Regulations\)](#). *Canada Gazette* 2000;134:1738-848.

Hiscock, R., Augustin, N. H., Branston, J. R., & Gilmore, A. B. (2020a) Longitudinal evaluation of the impact of standardised packaging and minimum excise tax on tobacco sales and industry revenue in the UK Tobacco Control, doi: 10.1136/tobaccocontrol-2019-055387

Hiscock, R., Augustin, N. H., Branston, J. R., & Gilmore, A. B. (2020b). Standardised packaging, minimum excise tax, and RYO focussed Tax rise implications for UK tobacco pricing. *PloS one*, 15(2), e0228069.

Hiscock R, Silver K, Zatoński M & Gilmore, A. B Tobacco industry tactics to circumvent and undermine the menthol cigarette ban in the UK Tobacco Control 2020;29:e138-e142

Hoek J, Gendall P, Eckert C, et al. Dissuasive cigarette sticks: the next step in standardised ('plain') packaging? *Tobacco Control* 2016, 25:699-705. doi: 10.1136/tobaccocontrol-2015-052533

International Tobacco Control (ITC) Project: National sample of 3,717 adult smokers in England (18+ years) who participated in a web-conducted survey undertaken between March and June 2018. ITC 29 countries.

Kimber et al. 18:1259 The effects of the European e-cigarette health warnings and comparative health messages on non-smokers' and smokers' risk perceptions and behavioural intentions. *BMC Public Health* 2018. doi: [10.1186/s12889-018-6161-7](https://doi.org/10.1186/s12889-018-6161-7)

Kimber C, Frings D, Cox S, Albery I, Dawkins L, (November 19<sup>th</sup> 2019). Communicating the Relative Health Risks of E-Cigarettes: An online experimental study exploring the Effects of a Comparative

Health Message versus the EU Nicotine Addiction Warnings on Smokers' and Non-Smokers' Risk Perceptions and Behavioural Intentions. Secondary Analysis testing effects of socio-demographic factors <https://osf.io/fhwnq/> Available at <https://mfr.osf.io/render?url=https://osf.io/fhwnq/?direct%26mode=render%26action=download%26mode=render>

Krüsemann EJ, Visser WF, Cremers JW, et al. Identification of flavour additives in tobacco products to develop a flavour library. [Tobacco Control 2018;27:105-111.](#)

Lee HS, Wilson S, Partos T, McNeill A, Brose LS. Awareness of Changes in E-cigarette Regulations and Behavior Before and After Implementation: A Longitudinal Survey of Smokers, Ex-smokers, and Vapers in the United Kingdom. *Nicotine Tob Res.* 2020 Apr 21;22(5):705-712. doi: [10.1093/ntr/ntz008](#). PMID: 30690624; PMCID: PMC7171274

Li L, Borland R, Cummings KM, Fong GT, Gravely S, Smith DM, Goniewicz ML, O'Connor RJ, Thompson ME, McNeill A. How does the use of flavored nicotine vaping products relate to progression towards quitting smoking? Findings from the 2016 and 2018 ITC 4CV Surveys. *Nicotine Tob Res.* 2021 Feb 25:ntab033. doi: [10.1093/ntr/ntab033](#). Epub ahead of print. PMID: 33631007.

MacGregor Consulting Ltd for the Chartered Trading Standards Institute Review of existing tobacco control legislation carried out by Trading Standards Services in England 2020

McDermott MS, East K, Brose LS, McNeill A & Partos T. (2021). The effectiveness of using e-cigarettes for quitting smoking compared to other cessation methods among adults in the United Kingdom. *Addiction*, DOI: [10.1111/add.15474](#)

McNeill A, Brose LS, Calder R, Bauld L & Robson D (2018). Evidence review of ecigarettes and heated tobacco products 2018. A report commissioned by Public Health England. London: Public Health England.

McNeill, A., Brose, L.S., Calder, R., Simonavicius, E. and Robson, D. (2021). Vaping in England: An evidence update including vaping for smoking cessation, February 2021: a report commissioned by Public Health England. London: Public Health England.

Mitchell D, Critchlow N, Moodie C, et al. [Reactions to, and trial intentions for, three dissuasive cigarette designs: a cross-sectional survey of adolescents in Scotland.](#) *Tobacco Control* Published Online First: 19 August 2020. doi: [10.1136/tobaccocontrol-2020-055842](#)

Mitchell D, Moodie C, Critchlow N, et al. Adolescents' reactions to, and perceptions of, dissuasive cigarettes: A focus group study in Scotland. *Drugs: Education, Prevention and Policy*, 27, 462-9 (2020). doi: [10.1080/09687637.2020.1732300](#)

Moodie C, O'Donnell R. 'I'm killing myself, but I'm saving the planet': rolling tobacco smokers' perceptions of rolling papers. *Tobacco Control* Published Online First: 23 November 2020. doi: [10.1136/tobaccocontrol-2020-056103](#)

Moodie C. [Adult smokers' perceptions of cigarette pack inserts promoting cessation: a focus group study.](#) *Tobacco Control* 2018. doi: [10.1136/tobaccocontrol-2016-053372](#)

Moodie CS, Hiscock R, Thrasher J, et al. [Perceptions of cigarette pack inserts promoting cessation and dissuasive cigarettes among young adult smokers in the UK: a cross-sectional online survey](#). *BMJ Open* 2018;8:e019662. doi: 10.1136/bmjopen-2017-019662

Moodie C, Angus K, Ford A, Best C, Stead M. A systematic review of research (2019-2020) exploring the response of consumers, retailers and tobacco companies to standardised packaging in the United Kingdom. Stirling, Scotland: University of Stirling. 2021

Moodie C, Angus K, Stead M. A systematic review of research exploring the response of consumers, retailers and tobacco companies to standardised packaging in the United Kingdom. Stirling, Scotland: Centre for Tobacco Control Research, University of Stirling, 2019. <http://hdl.handle.net/1893/30357>

Moodie C, Hoek J, Scheffels J, et al. [Plain packaging: legislative differences in Australia, France, the UK, New Zealand and Norway, and options for strengthening regulations](#). *Tobacco Control* 2019. doi: 10.1136/tobaccocontrol-2018-054483

Moodie C, Purves R, McKell J, de Andrade M. Novel means of using cigarette packaging and cigarettes to communicate health risk and cessation messages: A qualitative study. *International Journal of Mental Health and Addiction* 13, 333–344, 2015. doi: [10.1007/s11469-014-9530-1](https://doi.org/10.1007/s11469-014-9530-1)

Moodie C Novel ways of using tobacco packaging to communicate health messages: Interviews with packaging and marketing experts. *Addiction Research and Theory*, 24 (1), pp. 54-61, 2016. doi: [10.3109/16066359.2015.1064905](https://doi.org/10.3109/16066359.2015.1064905)

Moodie C, Hiscock R, and Reid G. Perceptions of cigarette pack inserts promoting cessation and dissuasive cigarettes among young adult smokers in the United Kingdom. Stirling, Scotland: Centre for Tobacco, *BMJ Open*, 2018. doi: [10.1136/bmjopen-2017-019662](https://doi.org/10.1136/bmjopen-2017-019662)

Moodie C, O'Donnell R, Fleming J, Purves R, McKell J, Dobbie F. Extending health messaging to the consumption experience: Adult smokers' perceptions of health warnings on cigarettes. *Addiction Research & Theory*, 2019: doi: [10.1080/16066359.2019.1653861](https://doi.org/10.1080/16066359.2019.1653861)

Moodie C, Gendall P, Hoek J, Mackintosh AM, Best C, Murray S. The response of young adult smokers and non-smokers in the United Kingdom to dissuasive cigarettes: An online survey. *Nicotine & Tobacco Research*, 21, 227-233. 2019. doi: [10.1093/ntr/ntx261](https://doi.org/10.1093/ntr/ntx261).

Moodie C, Mackintosh AM, Gallopel-Morvan K, Hastings G, Ford A. Adolescents' perceptions of health warnings on cigarettes. *Nicotine & Tobacco Research*, 29: 1232-1237. 2019. doi: [10.1093/ntr/ntw165](https://doi.org/10.1093/ntr/ntw165)

Mucan B, Moodie C. [Young adult smokers' perceptions of plain packs, numbered packs and pack inserts in Turkey: a focus group study](#). *Tobacco Control* 2018. Doi: 10.1136/tobaccocontrol-2017-053902

NEMS survey for ASH. Telephone survey of 558 independent retailers across all English regions. Respondents included convenience stores, off-licences, newsagents, independent fuel services and tobacconists. Fieldwork undertaken between 6th August and 21st August 2019.

Nyakutsikwa B, Britton J, Bogdanovica I, Langley T. Vitamin E acetate is not present in licit e-cigarette products available on the UK market. *Addiction*. 2019. doi: [10.1111/add.14920](https://doi.org/10.1111/add.14920)

Nyakutsikwa B, Britton J, Bogdanovica I, Boobis A, Langley T. Characterising vaping products in the UK: An analysis of Tobacco Products Directive notification data. *Addiction*. 2021. doi: [10.1111/add.15463](https://doi.org/10.1111/add.15463)

NHS Digital Smoking Drinking and Drug Use Survey, 2018 <https://digital.nhs.uk/data-and-information/publications/statistical/smoking-drinking-and-drug-use-among-young-people-in-england>

Noar et al. Effects of Strengthening Cigarette Pack Warnings on Attention and Message Processing: A Systematic Review. *Journalism & Mass Communication Quarterly*. Volume: 94 issue: 2, page(s): 416-442 doi: [10.1177/1077699016674188](https://doi.org/10.1177/1077699016674188)

Office for National Statistics [Adult smoking habits in the UK: 2019](https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/healthandlifeexpectancies/bulletins/adultsmokinghabitsingreatbritain/2019), 7 July 2020. <https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/healthandlifeexpectancies/bulletins/adultsmokinghabitsingreatbritain/2019>

Opazo Breton M, Britton J, Huang Y, Bogdanovica I. Cigarette brand diversity and price changes during the implementation of plain packaging in the United Kingdom. *Addiction*. 2018 Oct;113(10):1883-1894. doi: [10.1111/add.14282](https://doi.org/10.1111/add.14282).

Opazo Breton M, Britton J, Bogdanovica I. [Effect of UK plain tobacco packaging and minimum pack size legislation on tobacco and nicotine product switching behaviour](https://doi.org/10.1111/add.14282). *Addiction* March 2020.

Opazo Breton M, Britton J, Bogdanovica I. Changes in roll-your-own tobacco and cigarette sales volume and prices before, during and after plain packaging legislation in the UK. *Tob Control*. 2020 May;29(3):263-268. doi: [10.1136/tobaccocontrol-2018-054734](https://doi.org/10.1136/tobaccocontrol-2018-054734). Epub 2019 May 9. PMID: 31073097; PMCID: PMC7231459.

Scottish Government. [Age verification guidance](https://www.gov.scot/publications/age-verification-guidance/). 2017. <https://www.gov.scot/publications/age-verification-guidance/>

Simonavicius E, McNeill A, Brose LS. Transitions in smoking and nicotine use from 2016 to 2017 among a UK cohort of adult smokers and ex-smokers. *Drug Alcohol Rev*. 2020 Nov;39(7):994-1005. doi: [10.1111/dar.13063](https://doi.org/10.1111/dar.13063). Epub 2020 May 26. PMID: 32458503.

Stead M, Hitchman SC, Angus K, Aleyan S, Ford A, MacKintosh AM, Purves R, Mitchell D, Hammond D, Fong GT, Driezen P, Reid J, Craig L, Chung-Hall J, Cummings KM, Thrasher JF, Jin Cho Y, Cowell C, Coker T, Bullock S, Vohra J & Froguel A (2021) [E-cigarette marketing in the UK: evidence from adult and youth surveys and policy compliance studies](https://doi.org/10.1136/tobaccocontrol-2018-054734). Cancer Research UK. London.

Tattan-Birch H, Brown J, Shahab L, Jackson SE. Association of the US Outbreak of Vaping-Associated Lung Injury With Perceived Harm of e-Cigarettes Compared With Cigarettes. *JAMA Netw Open*. 2020;3(6):e206981. Published 2020 Jun 1. doi:[10.1001/jamanetworkopen.2020.6981](https://doi.org/10.1001/jamanetworkopen.2020.6981)



Taylor EV, East KA, McNeill A, Cummings M, Thrasher J, Fong GT, Quah ACK, McDermot M, Li G, Borland R, Hammond D, Aleyan S, Hitchman SC. Changes in responses to nicotine vaping product warnings and leaflets in England compared with Canada, the US and Australia: findings from the 2016-2018 ITC Four Country Smoking and Vaping Surveys. *Tob Control*. 2020 Oct 28:tobaccocontrol-2020-055739. doi: [10.1136/tobaccocontrol-2020-055739](https://doi.org/10.1136/tobaccocontrol-2020-055739). Epub ahead of print. PMID: 33115961.

Taylor GMJ, Lindson N, Farley A, Leinberger-Jabari A, Sawyer K, te Water Naudé R, Theodoulou A, King N, Burke C, Aveyard P. Smoking cessation for improving mental health. *Cochrane Database of Systematic Reviews* 2021, Issue 3. Art. No.: CD013522. doi: [10.1002/14651858.CD013522.pub2](https://doi.org/10.1002/14651858.CD013522.pub2). Accessed 14 March 2021.

[The Tobacco and Related Products Regulations 2016 \(legislation.gov.uk\)](https://www.legislation.gov.uk) Rule 38(4) *“The unit pack or container pack in which an electronic cigarette or refill container is, or is intended to be, presented for retail sale may not contain any element or feature which suggests economic advantage by including printed vouchers or offering discounts, free distribution, two-for-one or other similar offers.”*

[The Tobacco and Related Products Regulations 2016 \(legislation.gov.uk\)](https://www.legislation.gov.uk) Rule 43: *“No person may in the course of a business include, or procure the inclusion of, an electronic cigarette advertisement in an information society service provided to a recipient in the United Kingdom.”*

Thrasher JT, Osman A, Abad EN, Hammond D, Bansal-Travers M, Cummings KM, Hardin J, Moodie C. The innovative use of cigarette package inserts to supplement pictorial health warnings: An evaluation of the Canadian policy. *Nicotine & Tobacco Research* 2015. doi: [10.1093/ntr/ntu246](https://doi.org/10.1093/ntr/ntu246)

Thrasher JF, Swayampakala K, Cummings KM, et al. [Cigarette package inserts can promote efficacy beliefs and sustained smoking cessation attempts: A longitudinal assessment of an innovative policy in Canada](#). *Prev Med* 2016. doi: [10.1016/j.ypmed.2016.03.006](https://doi.org/10.1016/j.ypmed.2016.03.006)

World Health Organisation. [Report on meetings of expert committees and study groups. Report by the Director-General](#). Executive Board EB148/47. 148th session 23 December 2020 Provisional agenda item 22. 29 (i)

YouGov online survey for ASH. Total sample size was 10,749 adults. Fieldwork was undertaken between 17th February - 11th March 2020. The figures have been weighted and are representative of all English adults (aged 18+).

## **Appendix 1 Recommendations**

### **Health text and picture warnings across tobacco products (Q1-3)**

1. The regulations should be amended to increase the size of the Graphic Health Warnings to 75% on the front and 90% on the back in line with Australian regulations.
2. The Department of Health and Social Care (DHSC) should develop its own suite of 3 sets of 14 warnings which can be rotated in line with best practice.
3. The new images and warnings need to be developed and consumer tested on adults and teenagers before being adopted and implemented.
4. All tobacco products, and herbal cigarettes on sale in the UK, should have a combined photo and text health warning and plain, standardised packaging, as all these products cause serious harm and death to consumers.
5. Accessories which are used for smoking, including packages of rolling papers, and filters, should be regulated in the same way as tobacco products, prohibiting advertising and requiring a combined photo and text health warning and plain, standardised packaging.

### **Prohibition in characterising flavours, such as menthol in cigarettes and hand rolling tobacco (HRT) (Q4-5)**

6. The ban on flavours should be extended to:
  - a) all smoked products, in particular cigarillos which are designed to be a cigarette substitute; and
  - b) smoking accessories such as filters and cards which have been designed to enable smokers to add flavour to their cigarettes.
7. All flavourings should be prohibited as additives, not just 'characterising' flavours to prevent the industry from using the lack of precision in this definition to circumvent the flavour ban.

### **Regulate electronic cigarettes and associated refill cartridges (notification of placing on the market, adverse event monitoring, product requirements, information)**

#### **Product regulations (Q6-8)**

8. The DHSC should review whether e-cigarette packaging requirements could be introduced to reduce the attractiveness of e-cigarettes to youth while not undermining their appeal to adult smokers.
9. 'Open system' e-cigarettes should not be prohibited as this would remove from the market the type of e-cigarettes most widely used by vapers, and most effective in helping smokers switch.
10. E-cigarettes should be classified as essential products allowing production, distribution and retail sale of e-cigarettes to continue when COVID-19 restrictions are imposed.
11. Local authorities should continue to fund and provide stop smoking services and all stop smoking services should have a consistent and supportive approach to the use of vaping products as part of a quit attempt.
12. The government should fund behaviour change campaigns to address smokers' misperceptions of the risks of vaping among smokers and encourage smokers to switch.
13. The government should commission more research to investigate:
  - a) the impact of restrictions on the volume of cartridges and tanks and refill bottles introduced through the TRPR before deciding whether any changes should be made.

- b) how current health warnings on e-cigarettes could be revised to further encourage their use by smokers, while not increasing the appeal to youth.

#### **E-cigarette advertising (Q9)**

- 14. The DHSC together with CAP/BCAP should review the e-cigarette advertising rules to determine how the regulations could be clarified to ensure all advertising channels understand that campaigns by public health organisations promoting switching to e-cigarettes, or support for such campaigns, are not prohibited.
- 15. The CAP rules should specify that e-cigarette manufacturers' and retailers' social media profiles for their products must be limited to factual information which can only be promoted or distributed to consumers who have opted in to receive the message they contain.
- 16. E-cigarette adverts should be required to specify that e-cigarettes should only be used by current or former smokers as an alternative to smoking.
- 17. The DHSC should commission research to better understand what regulations would be most effective at limiting the appeal of e-cigarette adverts to youth. Further guidance on the use of imagery and the depiction of people in e-cigarette adverts is also needed.

#### **Enforcement: Penalties and enforcement of the regulations (Q11 and 19)**

- 18. Powers should be given to trading standards officers to issue on the spot fines.
- 19. Mandatory 'Challenge 25' regulations should be implemented for all Age Restricted products as is the case in Scotland. Retailers in England are encouraged to implement this voluntarily, but that allows for inconsistencies which undermine its effectiveness as a compliance and enforcement tool.
- 20. Specific exemption from RIPA should be allowed for underage sales enforcement.
- 21. Powers should be given to trading standards officers to enter dwellings which are being used to store and sell illegal tobacco.
- 22. A mandatory public health licensing system should be implemented for tobacco retailers with bans for anyone caught making underage sales, or selling illicit tobacco.

#### **Anything else on TRPR? (Q12)**

- 23. The MHRA should be required to review the notification requirements for vaping products intended for sale in Great Britain and implement a standard process for notification to enable data analysis and product comparison.
- 24. The TRPR regulations should be revised to:
  - a) include prohibition of free samples of nicotine products;
  - b) regulate all novel nicotine products which do not have a medicinal marketing authorisation, not just e-cigarettes. This should include an age of sale of 18 for all such products; and
  - c) to require notification to the MHRA of 0% nicotine e-liquid in the same way as e-liquid containing nicotine.

#### **The Standardised Packaging of Tobacco Products Regulations 2015**

- 25. To enhance the protection of children the following changes to standardised packaging regulations should be implemented: (Q14)

- a) A shorter sell-through period, as in Australia and New Zealand, given that tobacco companies used the extended (12-month) sell-through period granted in the UK and Norway to continue to promote their products;
  - b) pack dimensions which prevent the slimmer pack formats found in the UK and France;
  - c) fixed pack sizes for cigarettes and weights for rolling tobacco, as in New Zealand, to prevent tobacco companies from using pack size/weight to differentiate their brands or communicate value for money—a single fixed pack size for cigarettes and for rolling tobacco would be most effective;
  - d) only straight-edged flip-top packs for cigarettes, as in Australia and New Zealand, which are more consistent with the aims of plain packaging given that rounded and bevelled-edged cigarette packs are intended to increase appeal and shoulder boxes reduce health warning salience;
  - e) that the pack interior, including inner foil, be drab brown (Pantone 448C as per the outer wrapping);
  - f) that the main warning text is capitalised, centred and occupies all of the available space, as in Australia and New Zealand, to ensure the most effective display of this information;
  - g) a greater number of warnings in each set, a greater number of warning sets and frequent rotation, as in the UK prior to Brexit;
  - h) cigarette dimensions which prevent the slimmer cigarettes found in Australia, the UK, France and Norway; and
  - i) a ban on the use of colour descriptors within brand and variant names to halt existing practices, which potentially mislead consumers about product harm.
26. Furthermore DHSC should commission reviews of: (Q14)
- c) the role of filters in cigarettes, and whether they should be prohibited; and
  - d) whether branding visibility to retailers should be prohibited.

#### **To support adult smokers to quit (Q 15)**

- 27. The SPoT regulations should be revised to require manufacturers to include educational pack inserts, with the content determined by the Government.
- 28. SPoT regulations should be applied to all tobacco products, as is the case in Australia, which led the way on plain packaging, as well as Ireland and New Zealand.
- 29. SPoT regulations should also be applied to accessories which are used for smoking, including packages of rolling papers, and filters.

#### **Pack size (Q 17)**

- 30. Fixed pack sizes for cigarettes and weights for rolling tobacco should be required, as in New Zealand, to prevent tobacco companies from using pack size/weight to differentiate their brands or communicate value for money—a single fixed pack size for cigarettes and for rolling tobacco would be most effective. (see recommendation in answer to Q14 above).
- 33. Fixed pack sizes should be required for all tobacco products, in particular cigarillos which are surrogate cigarettes.

**Appearance of cigarettes (Q 19)**

31. The regulations should be revised to standardise the size of cigarettes and to require all factory made cigarettes, rolling papers and other smoking accessories to carry anti-smoking messages.