

SCOTSS response to:

Creating a smokefree generation and tackling youth vaping

Published 12th October 2023

Closes 6th December 2023, 11.59pm

[Creating a smokefree generation and tackling youth vaping: your views - GOV.UK](https://www.gov.uk/consult/creating-a-smokefree-generation-and-tackling-youth-vaping)

www.gov.uk

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)

SCOTSS supports this proposal.

SCOTSS would further suggest that the restriction should relate to “supply” instead of “sale” to take account of products distributed free of charge for example.

SCOTSS would also support the other (complementary) measures that New Zealand introduced (referred to in the Consultation narrative), being considered to further support the aim of creating a smokefree generation, i.e.:

- * Controls to reduce the levels of nicotine in tobacco products to non-addictive levels and
- * Restricting the number of retailers that can supply smoked tobacco products through some form of an Approved Smoked Tobacco Retail Scheme.

Although stipulated as not within scope, SCOTSS would also support a similar approach being taken in relation to the sale of vaping products with a view to stopping the alarming uptake by young persons of these products.

Some of the nicotine vaping products have much higher levels of nicotine than cigarettes and are possibly more addictive. A single use e-cigarette with a 2ml tank could contain up to 40mg of nicotine (20mg per ml) whereas a packet of 20

cigarettes could contain up to 20mg of nicotine (1mg per cigarette). A single use vape is far easier to consume than a pack of 20 cigarettes.

Prohibiting the sale (or supply) to anyone born on or after 1 January 2009 would not prevent current adult smokers from using vapes as an aid to quit smoking, but would make it more difficult for children to start.

There could however still be a route for persons born on or after January 2009 to access these products as an aid to quit smoking but perhaps in a more controlled manner, to ensure the product was being supplied as an aid to quit smoking as opposed to taking up as a lifestyle product. For example a sale (or supply) following consultation with Smoking Cessation professionals, a GP or Pharmacist, who can also consider other products such as nicotine replacement medicinal products.

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)

There are already offences in place in Scotland regarding buying or attempting to buy tobacco products and Nicotine Vapour Products on behalf of persons who are under 18, (often referred to as 'proxy purchase'). Scottish local authority Trading Standards services have good experience of this area of enforcement work.

Often underage sales test purchasing programs (and issue of Fixed Penalty Notices) can be very effective at reducing instances of underage sales by retailers however as a consequence, this success can be followed by allegations of proxy purchasing activity.

It is the experience of Scottish local authorities that it is much more difficult to enforce proxy purchase provisions.

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)

SCOTSS agrees with this proposal.

SCOTSS would also support an extension of the scope to include:

- All tobacco related products including Heated Tobacco Products, pipes and waterpipes.
- Vaping products. (Although vaping products were stated to be outwith scope and are already covered for current age of sale legislation in Scotland, SCOTSS would support the age restrictions being changed such that anyone born on or after 1 January 2009 will never be legally sold/ supplied vaping products similar to the proposals for tobacco products.)

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)

SCOTSS agrees that any statutory notice would need to change to reflect the new age restriction requirements.

We also suggest that consideration should be given to any statutory warning notice also including the age restrictions for vaping products, although we are conscious of the balance between the amount of information displayed and its prominence and impact on the consumer.

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)

SCOTSS is concerned that the wide range of flavours of vapes, particularly the sweet flavoured options, is a key factor that makes vaping very attractive to children and even to adults who have never smoked.

The concern is that the wide range of flavours are attracting young people and non smokers to take up vaping, with the products being purchased as "lifestyle

products” as opposed to products being purchased to aid adult smokers to quit smoking.

Given that tobacco products taste of tobacco, for adult smokers that want to use vapes to aid smoking cessation it is submitted that such a wide range of flavours is unnecessary.

As a comparison, nicotine replacement products, such as nicotine lozenges and nicotine gum, marketed and licensed as medicinal products, are marketed in only a few different flavour options.

In addition to this measure and all the other measures discussed in this consultation, SCOTSS would also suggest that vaping cessation support is provided, similar to the mechanisms already in place to assist with smoking cessation.

Parents have raised concerns about sons or daughters becoming addicted to nicotine as a result of using vaping products, so as well as measures which aim to reduce youth uptake of vaping, support needs to be put in place for young people who already have a nicotine addiction as a result of vaping but now want to stop vaping.

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)

SCOTSS believes that limiting the characterising flavours of vapes would be an effective option to implement restrictions on flavours and would assist in making vapes less appealing to children and adults who do not smoke, particularly if sweet flavoured options are no longer available.

While considering this option most effective, SCOTSS also believes that how the vape is described is also important.

SCOTSS would also suggest that any provisions brought in to limit flavours are wide enough to cover future product innovation by the industry as it is anticipated that the industry will innovate to try and circumvent flavour restrictions. For example future innovations could result in products that could be used as an add-on to a vaping product to introduce flavours.

When menthol flavoured cigarettes were banned, products then emerged that could be used to introduce a menthol flavour to a standard cigarette, e.g. flavouring sticks that could be inserted into a cigarette filter.

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)

SCOTSS believes that restricting vape flavours to tobacco, mint and menthol would give some options to adult smokers wishing to use vapes to aid smoking cessation while at the same time becoming less appealing to young persons or adults who don't smoke.

We appreciate however that adding any flavours to vapes may introduce unknown health risks and several administration have either banned flavoured vapes or restricted flavours to tobacco only flavour.

Nicotine lozenges and gum are generally marketed in a mint flavour, although it is conceded that there are some "fruit" options too.

SCOTSS supports a ban on all sweet and fruit options as these options are so appealing to children and even adults who have never smoked, we anticipate that a ban on such flavours would reduce vape user numbers, in particular younger user numbers and also reduce the intensity of use by remaining users.

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)

SCOTSS do not think any alternative flavour options should be necessary. Tobacco flavour, mint and menthol flavours still give smokers a little choice if they want to use vaping products as an aid to quitting smoking. Cigarettes only taste of tobacco.

These flavour options are consistent with administrations that have already banned or restricted vape flavours and the flavour options are comparable with the limited flavour options that medicinal nicotine replacement products are available in.

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)

SCOTSS supports that non nicotine e-liquids should also be included in restrictions on vape flavours.

The main purpose of any restriction needs to be a reduction in youth vaping and sweet flavours are more appealing to young people than tobacco and mint flavours.

While non nicotine containing products are already covered by age restricted sales provisions in Scotland, SCOTSS would support regulation of these products in the same manner as nicotine containing vapes in relation to product safety, presentation and advertising requirements (although some of the current requirements are inadequate, for example advertising restrictions for vapes are quite limited.)

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)

SCOTSS are in favour of a display ban and would be very supportive of the Scottish Government bringing this measure in as soon as possible under provisions in the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016, which would also end free samples among other measures.

It was noticeable that around the time the display ban for tobacco products came in, it was accompanied by a noticeable increase in the display in vapes. Over the

years the number of outlets supplying these products has increased, particularly when single use vapes emerged.

The current arrangements expose both young people and non-smokers to vaping products as they can be displayed prominently in shop windows, at the end of aisles and often on top of sales counters next to sweets. Displays are slick, colourful and eye-catching and attractive to young people. Vapes are also widely available from all manner of stores, even shops that primarily sell child appealing goods such as sweets and slushies.

If Government is serious about viewing vapes as a safer alternative to smoking rather than a lifestyle choice then more restrictions in relation to the display of these products is a very good starting point. Reduced visibility could also lead to a reduction in pro-vaping attitudes.

A display ban would however need to be accompanied by restrictions on in-store advertising of vaping products, including generic vape advertising.

Advertising of vapes in general needs to be toughened up to reduce the exposure of children and non-smoking adults to these products.

The Scottish age restricted sales legislation offences as regarding the “sale” of nicotine vapour products to persons under 18 or the “buying” of a nicotine vapour product on behalf of someone who is under 18 could be further improved if the offences related to “supply”.

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)

SCOTSS would support an exemption for specialist vape shops as long as vape displays within the shop were not visible from outside the shop and there was no advertising of vapes visible from outside the shop. Entry to shops should be for strictly over 18s (or older if vape age restrictions are changed similar to the proposals for tobacco products.)

As previously stated, advertising of vapes in general needs to be toughened up to reduce the exposure of children and non smoking adults to promotion of these products.

In terms of the current display ban provisions in Scotland for tobacco products (and smoking related products in a place where tobacco products are offered for sale)

and the exceptions for “specialist tobacconists” the definition for “specialist tobacconist” (from the Tobacco Advertisements and Promotion Act 2002) is couched in terms of the amount of sales derived from the sale of cigars, snuff, pipe tobacco and smoking accessories being over half their sales. Cigarettes and hand rolling tobacco still cannot be on display and the display of any other tobacco products or smoking related products cannot be visible from outside the shop. There are not many retailers that fall within this definition.

If specialist vape shop were defined in similar terms then there could potentially be a lot of retailers that fall within this definition.

“Specialist vape shop” could perhaps be restricted to shops who only sell vapes and vaping equipment or shops in respect of which the sale of these products represents a very high percentage of their sales.

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)

Not applicable – SCOTSS supports a display ban.

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)

SCOTSS is of the opinion that prohibiting the use of all imagery and colouring on both the vape packaging and vape device but still allowing branding such as logos and names would help to reduce the attractiveness of these products to children and adults who don't smoke.

SCOTSS cannot see why such a measure would reduce attractiveness to adult smokers wanting to use the product as a smoking cessation aid,

SCOTSS would support still allowing branding to assist retailers in differentiating between products, however with some restriction regarding size and format, and to ensure brands are not attractive to children and young people.

Standardised packaging for tobacco while making packets of cigarettes look very unattractive and unappealing has made it difficult for retailers to differentiate between products as they all look the same.

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 – SCOTSS agree that there needs 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)

SCOTSS agrees that there should be restrictions on the sale and supply of disposable vapes, as such a step could make vaping products much less appealing to children, would assist with environmental aims and result in a reduction in littering caused by these products.

As single use vapes emerged onto the market, more concerns started to be raised and complaints received about the sale of these products to children.

The products were much cheaper than vaping devices that could be re-filled and electrically recharged. They also became a popular item for retailers to stock such that vapes became much more widely available and visible.

In terms of the products to restrict, the industry are innovating and are now producing products that while not "single use" products are products with very "limited lives", still within an acceptable price range for children and still prone to being littered instead of disposed of using a route to recycle the product.

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)

SCOTSS agrees that the restrictions on disposable vapes should take the form of prohibiting their sale and supply.

Again in terms of which products are prohibited, care needs to be taken in terms of defining the products to be included within the prohibition, as the Industry is good at exploiting weaknesses in vaping legislation and avoiding the intended aims.

The definition of the “disposable” vapes to be prohibited, should include not only single use vapes but be broad enough to encompass the “limited life” vapes that have emerged and also to catch any future innovations.

If bringing in such a prohibition, SCOTSS recommends that there is a ban on importation of disposable vapes to the UK (and indeed vapes that are non compliant for any other reason), with such ban including importation for any reason and including consignments that are “passing through”.

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)

SCOTSS recommends that the definition for the restrictions of “disposable” vapes, should include not only single use vaping devices, but be broad enough to encompass the “limited life” innovative vapes which have recently emerged. There should also be some provision to catch future innovations in disposable technology which allows the regulator to restrict the supply of any particular new design.

All products which fall under the following definition could be considered within any sales restriction.

Vaping devices which –

- a) have a tank which cannot be refilled, or
- b) have a battery which cannot be recharged, or
- c) have a coil which cannot be replaced, or

d) are devices supplied with single use cartridges and the cartridges are not also available separately to the device to purchase.

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)

SCOTSS agrees that there should be an opportunity for products already in the supply chain to be allowed to sell through and would support 6 months if this is a reasonable estimate of how long it would take for disposable vapes to go through the supply chain from ordering to sale by a retailer.

Ideally the prohibition should come in as soon as possible.

While supportive of an implementation period, the timescale for laying the legislation also needs to be swift.

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)

SCOTSS would suggest a ban on imports of prohibited vapes (including a ban on consignments passing through) and funding to assist with enforcement at ports and borders.

Making vaping products excisable which will enable other Enforcement agencies to assist with regulating this market.

If Government does not prohibit "disposable" vapes, then consideration of different rates of excise duty with much higher rates of excise applied to "disposable" products would be a good way of making the polluter pay.

While referring to these products as "disposable" vapes, really they are all recyclable and should be disposed of in a way that they can be recycled. However the reality is that they get disposed of as general household waste or worse end up littering communities throughout the UK.

If these vapes are not prohibited (and SCOTSS would prefer that they were), other options to improve environmental options are:

- Requiring products to be described as “recyclable” instead of “disposable” to highlight to consumers that the products should be recycled,
- Consideration of applying excise duty to vaping products and with a high rate of duty applied to the products that are single use or limited use products.
- Some other alternative measure to the excise duty option referred to above which would involve the vaping product supply chain effectively paying for disposal.
- Availability of accessible recycling schemes (Ensuring that in-store take back schemes are being operated but also supplemented with recycling points within popular public spaces).

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)

Although SCOTSS does not have evidence of the harm of non nicotine vapes, the profession are aware that products that have been marketed as non nicotine containing vapes have sometimes been found to contain nicotine.

The non nicotine containing vapes can also be a gateway to the nicotine containing versions which can have similar branding and packaging to the non nicotine containing ones.

Non-nicotine containing vapes are included in the definition of “nicotine vapour product” for the purposes of the age restricted sales restrictions in Scotland which is welcome, however they are not controlled like nicotine containing vapes under the Tobacco and Related Products Regulations 2016

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)

In Scotland, non nicotine vapes are already included as regards underage sales provisions however they are not caught by the Tobacco and Related Products Regulations 2016. (TARP)

SCOTSS would support that non-nicotine vaping products are regulated in the same way as nicotine vaping products in terms of TARP, and that non-nicotine vapes should be subject to the same notification system as other vapes to the MHRA.

Non-nicotine vapes can contain products, particularly in the flavours, that are prohibited in nicotine vapes, and some are described as containing healthy vitamins or that they have health benefits when there is no evidence of this.

There are no controls on CBD vaping products.

Some vapes described as having no nicotine have been determined to contain nicotine.

Nicotine vapes are sometimes sold via platforms such as Amazon and eBay and described as “Zero Nicotine” by the supplier but in circumstances when the customer knows that they contain nicotine. The “No nicotine” descriptor is used to bypass restrictions set up by those selling platforms as regards the sale of nicotine containing vapes.

Non-nicotine containing vapes still normalise the behaviour of vaping, while there is a lack of evidence regarding the long term effects of vaping, whether in terms of the use of nicotine or non-nicotine containing products.

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)

SCOTSS does not have any evidence regarding specific harms from nicotine pouches, however nicotine is generally accepted to be harmful to health in terms of it being a highly addictive substances and with high levels of nicotine causing toxicity.

The products are already being actively promoted to children and young persons as a “lifestyle” product.

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)

SCOTSS would recommend that other consumer nicotine products that have not been licensed as a medicinal product by MHRA should be regulated in a similar way to vapes, if Government considers these products can assist smokers in quitting smoking.

There are however established medicinal products that are available to assist with smoking cessation such as nicotine lozenges and nicotine gum and SCOTSS would question whether nicotine pouches and similar products are actually needed as aids to assist people to quit smoking. They appear to be getting promoted as "lifestyle" products.

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)

SCOTSS believes that an increase in the price of vapes would be effective in reducing the number of children vaping.

When single use vapes came on the market, these products became much more affordable by children. Disposable vapes have been seen offered for sale at prices as low as £1.99 per unit.

As indicated previously, vapes could be made excisable, with the products that are most appealing to children carrying higher rates of excise duty.

Making the products excisable would also bring in partners such as HMRC and Border Force to help tackle illegal products.

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)

In Scotland, the introduction of fixed penalty notices in 2011 as an alternative to reporting offences to the Procurator Fiscal for tobacco and nicotine vapour product underage age sales offences, and other requirements, was a very welcome enforcement tool.

It is also helpful that the values of Fixed Penalty Notices issued increases for subsequent offences (within a 2 year period).

Administrative penalties such as this enables enforcement action to be taken swiftly against non compliant traders, the money raised from the Fixed Penalty Notices goes towards the cost of the underage sales work carried out by the Service and ensures that the financial penalties imposed on persons who sell is consistent and proportionate.

In Scotland, retailers are also required to register with Scottish Government if operating a tobacco or nicotine vapour product business. Their details appear on a public register, which has been a useful tool to law enforcement in helping identify retailers of tobacco and nicotine vapour products.

While the register has been a useful innovation in Scotland, a requirement for businesses to gain a licence may be an alternative. If businesses are required to obtain licences and renew on an ongoing basis, this could assist with ensuring information is still accurate, there could be the ability to restrict the number of outlets if desired and it may also give a better route to effectively "banning" businesses from supplying tobacco products and nicotine vapour products in relation to businesses that there are concerns about their compliance with the legislation.

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 current starting fixed penalty notice value in Scotland for an underage tobacco or nicotine vapour products is £200, with a £50 discount given for payment within

the discounted period which seems a reasonable starting point for penalties issued to the business operator.

SCOTSS would however support a smaller starting penalty notice value in relation to notices issued to employees of perhaps £100.

In Scotland the value of the Fixed Penalty Notices that can be issued increases in value by £200 increments for subsequent underage sales offences, with a £50 discount given for payment within the discounted period.

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 current starting fixed penalty notice value in Scotland for an underage tobacco or nicotine vapour products is £200, with a £50 discount given for payment within the discounted period.

SCOTSS would not want this starting point of £200 to reduce for Fixed Penalty Notices issued to the business operators in relation to underage sales of vaping products offences.

SCOTSS would however support a smaller starting penalty notice value in relation to notices issued to employees of perhaps £100.

In Scotland the value of the Fixed Penalty Notices that can be issued increases in value by £200 increments for subsequent underage sales offences, with a £50 discount given for payment within the discounted period.