



The Association of Directors of Public Health Consultation Response

Creating a smokefree generation and tackling youth vaping

Objectives and Scope

The Department of Health and Social Care (DHSC) is consulting on proposed action to protect future generations from the harms of smoking, by creating the first smokefree generation. It also seeks views about proposals to crack down on youth vaping and ensure the law is enforced.

The consultation asks questions in 3 areas for which new legislation would be needed, which are:

- Creating a smokefree generation: consulting on the smokefree generation policy and its scope.
- Tackling youth vaping: consulting on several options to ensure we take the most appropriate and impactful steps, building on England's analysis of the youth vaping call for evidence.
- Enforcement: consulting on the proposal to introduce new powers for local authorities in England and Wales to issue fixed penalty notices to enforce age of sale legislation of tobacco products and vapes.

About ADPH

ADPH is the representative body for Directors of Public Health (DsPH), and is a collaborative organisation, working in partnership with others to strengthen the voice for public health, with a heritage which dates back over 160 years. ADPH works closely with a range of Government departments, including UKHSA and OHID as well as the four CMOs, NHS, devolved administrations, local authorities (LAs) and national organisations across all sectors to minimise the use of resources as well as maximise our voice.

ADPH aims to improve and protect the health of the population by:

- Representing the views of DsPH on public health policy.
- Advising on public health policy and legislation at a local, regional, national and international level.
- Providing a support network for DsPH to share ideas and good practice.
- Identifying and providing professional development opportunities for DsPH.

Our position

Smoking is the leading cause of preventable death and disease in the UK. Each year, approximately 74,600 deaths in England are attributable to smoking and it is estimated to cost the NHS in England £1.9 billion annually. About half of all life-long smokers will die prematurely, losing on average about 10 years of life.¹

Smoking is also the biggest driver of health inequalities, with higher smoking rates being linked to almost every indicator of disadvantage. Half the difference in life expectancy between people living in the most and the least deprived areas is caused by smoking, and rates of smoking in pregnancy in the most deprived areas of the UK are nearly six times those of the least deprived areas.²

The economic costs of tobacco use are substantial, including significant treatment cost as well as lost human capital. Smokers in England lose approximately £2,000 of their income each year, which adds an extra burden to households during the cost-of-living crisis.³ Whilst tobacco companies continue to make billions of pounds of profit every year from the deterioration of the nation's health, smoking costs society in England £17.3 billion, including a cost of £1.1 billion to local authorities for care for smoking-related illness.⁴

Data over the last 5 years shows most smokers want to quit, but cannot due to an addiction to nicotine that started in their teenage years. Over 80% of smokers started before they turned 20, many as children.⁵ They have had their choices taken away by addiction, and their lives will be harmed and cut short by an addiction they do not want. Non-smokers, including children and pregnant women, also have no choice in being exposed to the dangers of second-hand smoke.

The proposed ring-fenced increase in funding for a smokefree generation is necessary and welcomed. Further details of how the money is distributed and allocated within the system, and expectations for delivering funding, and the monitoring and reporting process must be clearly laid out. Achievable targets must be put in place which are realistic for already stretched and under-funded services. Whilst the new investment is welcomed, it is still a fraction of the money lost due to years of budget cuts to the Public Health Grant.

Response to questions

Legislating to create a smokefree generation

Q1: 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? [Multiple choice]

- Agree

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

Smoking is the leading cause of preventable illness and premature death in England, killing on average 76,000 people each year and increasing a person's risk of developing more than 50 serious health conditions. It is therefore imperative that action is taken to protect not only the individual's health from the harm caused by smoking, but also the health and social care services which shoulder the burden of treatment for preventable illness of a known cause.

The Khan Review clearly laid out as one of four key recommendations, that raising the age of sale by one year every day would enable the UK to achieve a smokefree and make smoking obsolete, achieving a longer-term ambition to eliminate smoking amongst the population. Never taking up smoking is much

easier than having to quit.

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The more flexibility Directors of Public Health (DsPH) have to use the funds across a range of initiatives, the better outcomes will be. If the additional funding is administered under similar conditions to the current Supplementary Substance Misuse Treatment Grant Funding, it will limit the range of interventions which could be provided and thus severely limiting the outcomes achieved. DsPH should be consulted on how best to allocate funding and the conditions under which it is assigned.

Q2: Do you think that proxy sales should also be prohibited? [Multiple choice]

- Yes

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

The objective of changing the age of sale for tobacco products is to create a smokefree generation. If proxy sales are allowed, then people born before 1 January 2009 can still purchase tobacco products indirectly. This will render the change in the legal age of sale ineffective in stopping the start.

It is known that the habit of smoking often begins in teenage years – over 80% of smokers start before they are 20, many as children.⁵ Increasing the age of sale and removing the ability to purchase tobacco prevents these addictions from developing. It stops people's lives being cut short, lessens their years spent in ill-health and protects them from a product which will strip them of choice, due to its highly addictive nature.

Q3: Do you agree or disagree that all tobacco products, cigarette papers and herbal smoking products should be covered in the new legislation? [Multiple choice]

- Agree

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

We agree that all tobacco products, cigarette papers and herbal smoking products should be covered in the new legislation. These products are all covered by the current scope of age of sale legislation in England and Wales and this should continue to be mirrored in new legislation. The tobacco industry will aim to reinvent highly addictive products to ensure they maintains their consumer base. Including all of the aforementioned products ensures consistency across the market and does not allow for loopholes within legislation to be found and used advantageously by the tobacco industry. Without such consistency, enforcement becomes much more challenging, and inconsistencies can be manipulated.

Q4: 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?
[Multiple choice]

- Agree

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

Currently, it is a legal requirement for retail premises to display the statement that 'it is illegal to sell tobacco products to anyone under 18'. With the change of legal age of sale, this legal requirement should be updated. Retail premises should spell out the new legal age of sale '1 January 2009' clearly to ensure clarity and make enforcement easier.

We welcome the announcement that funding for enforcement will be increased as we are aware that colleagues within Trading Standards are already stretched in their capacity. The success of new legislation will be based upon the ability to enforce it, and it is crucial that adequate funding and resources are dedicated towards this.

Restricting vape flavours

Q5: Do you agree or disagree that the UK Government and devolved administrations should restrict vape flavours? [Multiple choice]

- Agree

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

We agree that there should be a restriction on how vape flavours are described.

It is crucial to strike the right balance between reducing appeal to children while also preserving the appeal of vapes to adults who want to quit. A disproportionate approach could lead to unintended consequences with research from the United States showing that, rather than nudging people away from vapes, such measures to restrict vape flavours drive users to instead buy conventional cigarettes and that instead of reducing nicotine-related harms, they may instead be magnifying them.⁶

Following advice from the English Chief Medical Officer, vaping is effective when used as a stop smoking tool, and as such it should be marketed as one. A restriction on how vape flavours are described does not remove this function from the product, but rather lessens its attractiveness to children and young people. The marketing of vapes to children is utterly unacceptable.

Q6: 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)
[Multiple choice]

- Option 1: Limiting how the vape is described

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

As a minimum, the description of vape flavours should be limited to ensure it is not used to market vapes to children and young people. This could be achieved by putting restrictions on the naming of flavours and descriptions used so they are not advertised as appealing to children or appropriate for use by someone of their age.

A 2019 US study found that over two-thirds of current e-cigarette users typically use non-tobacco flavours and flavour was a cited by nearly one-third of participants as a reason for vaping initiation. Worryingly, users of flavoured vapes reported greater satisfaction and self-perceived addiction, and participants aged 18-24 stated flavour, particularly fruit, was more likely to motivate them to initiate vaping.⁷

Limiting flavour descriptors whilst not removing their availability from the market maintains their appeal to adults as a stop smoking tool whilst decreasing their appeal to children.

Q7: 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? [Multiple choice]

- 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. (300 words)

The flavours available to adults should not be limited, as vapes are required to be an attractive alternative to cigarettes and thus need to offer variety. At present 47% of adult vape users show a preference for fruit flavours.⁸ There should, however, be immediate and effective restrictions on the descriptions of flavours, to lessen their appeal to children, as has been previously discussed in Question 6.

Greater research into vape flavouring is required before any regulatory decision is made.

Q8: Do you think there are any alternative flavour options the UK Government and devolved administrations should consider? [Multiple choice]

- No

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

Fruit, menthol/mint and tobacco are presently the top three flavour choice amongst adult vape users in the UK.⁸ As explained above, there is a need for regulation on descriptions of flavours.

Q9: Do you think non-nicotine e-liquid, for example shortfills, should also be included in restrictions on vape flavours? [Multiple choice]

- Yes

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

As discussed previously, it is crucial to prevent companies from finding legal loopholes to continue promoting products inappropriately. Therefore, restrictions should be placed on descriptions of vapes and these restrictions should be extended to all vaping products, including non-nicotine e-liquid.

Regulating point of sale displays

Q10: Which option do you think would be the most effective way to restrict vapes to children and young people?

- 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. (300 words)

Awareness of vaping promotion in shops amongst 11-17 year olds has increased between 2022 and 2023, from 37% to 53%. Only one in five say they have never seen e-cigarettes being promoted, down from 31% the previous year.⁶ These statistics clearly demonstrate the growing number of children who are exposed to the marketing of these addictive products. To address this, we believe that vapes should only be kept behind the counter but can still remain on limited display with no other instore or externally visible promotion and providing that regulations have been implemented to remove child-friendly packaging and labelling. This is indicative of the lower level of risk of vapes compared to tobacco products, whilst at the same time this measure can reduce the exposure of children to vapes.

Placement behind the counter gives the retailer an opportunity to question the customers age to ensure that age restrictions are being enforced.

Restrictions around vape displays may also reduce the number of retailers willing to stock them, discouraging irresponsible sales and aiding enforcement.

Once in place, if these measures are found to be insufficient, they should be reviewed and tighter regulations for point-of-sale displays should be introduced so they are in line with regulations for tobacco products.

Q11: Do you think exemptions should be made for specialist vape shops?

- Yes

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

Yes, however visible on-street marketing, including shop front displays and advertising boards, should be regulated to limit exposure of children to these products. Although children may not be able to buy the products within the shop, they are seeing the advertisement, it may encourage them to source vapes elsewhere. Specialist vape shops should be a point of access for those of legal age to buy them, and not serve as an advertising mechanism within communities for vaping.

Q12: If you disagree with regulating point of sale displays, what alternative measures do you think the UK Government and devolved administrations should consider? (optional) Please explain your answer and provide evidence or your opinion to support further development of our approach. Maximum 300 words.

N/A

Regulating vape packaging and product presentation

Q13: 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? [Multiple choice]

- 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

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

A study by Action on Smoking and Health (ASH) found that removing brand imagery could have an impact in reducing the appeal of e-cigarettes to young people without compromising their appeal to adult smokers. Furthermore, 37% of children who had never tried an e-cigarette expressed a preference when shown a fully branded packs and 27% expressed a preference when shown the packs without brand imagery. This indicates that children are influenced by the branding currently used by manufacturers, and restrictions would be a simple method in reducing their appeal to children.

We recommend that the Government prescribe standards for size and type face of any branding used on vapes, as is already done with tobacco product packaging. More detailed research is required to inform the development of policy in this area, and total standardisation may lead to misconceptions regarding the relative harm levels of tobacco and vape products.

Q14: If you disagree with regulating vape packaging, what alternative measures do you think the UK Government and devolved administrations should consider? (optional) Please explain your answer and provide evidence or your opinion to support further development of our approach. Maximum 300 words.

N/A

Restricting the supply and sale of disposable vapes

Q15: Do you agree or disagree that there should be restrictions on the sale and supply of disposable vapes? [Multiple choice]

- Agree

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

In view of the environmental impact of disposable vapes and their increasing use by children and young people, ADPH agrees that there should be restrictions on the sale and supply of disposable vapes. Immediate Government actions are needed, supported with increased funding and powers for regulatory services and trading standards.

It is crucial for any Government actions to minimise the impact of disposable vapes on children and young people and the environment. Stronger enforcement and regulations should be used to limit the sale of e-cigarettes to underaged children, and current loopholes in legislation which allow children to be given vapes for free by the tobacco industry, should be closed.

Restrictions on the sale of disposable vapes would make them less accessible than other reusable e-cigarette products. This would encourage smokers to opt for reusable e-cigarette as a stop-smoking tool and reduce the attractiveness of disposable vapes to children.

Government policies should also take into consideration the impact they have on health inequalities. Vulnerable populations, such as those with dexterity issues, learning difficulties and people detained in mental health settings, have used disposable vapes as an important means to quit smoking. Therefore, the Government must consider alternative ways to support these vulnerable groups to quit smoking when

acting on disposable vapes. The Government should also consider the feasibility and possible unintended consequences of banning disposable vapes, including increased black market activities.

Q16: Do you agree or disagree that restrictions on disposable vapes should take the form of prohibiting their sale and supply? [Multiple choice]

- Don't know

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

ADPH do not currently have a majority member consensus on the topic of banning disposable vape sales and as such we are unable to support this action either way.

Q17: Are there any other types of product or descriptions of products that you think should be included in these restrictions? (optional) Please explain your answer and provide evidence to support further development of our approach. Maximum 300 words.

The Government may consider standardising the shape and form of single use products. This may be beneficial from an environmental and enforcement standpoint, as devices take on less of a toy form and thus are less appealing to children.

Careful consideration must be given to policy development in this area to ensure there are no unintended consequences.

Q18: 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?

- Disagree

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

The loophole which legally allows underage children to receive vapes for free from tobacco companies needs to be closed with immediate effect.

Q19: 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? (optional) Please explain your answer and provide evidence to support further development of our approach. Maximum 300 words.

Single use vapes are currently marketed as disposable, not recyclable, with very little availability of, and communication about, options for recycling them. At least 5 million vapes per week are being binned, which amounts to 8 per second, despite the fact up to 80% of materials within vapes can be recycled. ADPH support the recommendations made by Material Focus, which outline the legal and financial responsibilities under UK waste electrical (WEEE) and portable battery regulations of producers, importers, distributors and retailers of single-use vapes.⁹ The full cost of this should be paid by the tobacco industry, not through public finance.

Non-nicotine vapes and other nicotine consumer products

Q20: 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

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

According to ASH's study in 2023, 51% of 11-17 year olds who currently vape said that the e-cigarette they used most often always contained nicotine; 30% said it sometimes contained nicotine; 9.5% that it never contained nicotine; with 10% saying they didn't know.

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

The Government should impose further restrictions on non-nicotine vapes to prevent uptake from children and young people and to prevent industry from using this as a loophole to avoid regulations.

Q21: Do you think the UK Government and devolved administrations should regulate non-nicotine vapes under a similar regulatory framework as nicotine vapes?

- Yes

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

Yes, we believe that both nicotine containing and non-nicotine vapes should be regulated under the same framework.

If non-nicotine vapes are not regulated in the same way, the tobacco industry can use them to promote vaping. This will greatly reduce the effectiveness of restricting the promotion of nicotine-containing vapes.

Q22: 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

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

Overall, in 2023 adult use of nicotine pouches remained low. However, it has been found that tobacco companies promote nicotine pouches as a fun and glamorous lifestyle product to children and young people.¹⁰ It is utterly unacceptable that nicotine pouches, which are both harmful and addictive, are being sold to children and young people.

Currently, there are limited marketing restrictions and product requirements for nicotine pouches, and no age of sale. These products are currently unregulated, which leaves children and young people vulnerable to the highly targeted marketing that has been developed specifically to increase sales, and therefore

harm.

The Government should act to introduce tighter regulation to protect children from being able to access these, and other harmful, products and stop them being advertised as something which is fun and exciting or suitable for children. Nicotine pouches should be regulated in a similar way to vaping products.

More research is needed into the long-term impact they have on health, and it may be the case that they could be helpful as a tool to help smokers quit. However, it is clear that children and non-smokers should not be being encouraged to use them.

Q23: 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

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

Regulations are needed to cover all nicotine products.

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

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

More independent research is needed to determine the role such products can play in tobacco control and for broader public health.

Affordability

Q24: Do you think that an increase in the price of vapes would reduce the number of young people who vape?

- Yes

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

ADPH agree that an increase in the price of vapes should be introduced to reduce the number of young people who vape. Decreasing the affordability will decrease their accessibility and the frequency with which vaping products are purchased. We believe this should be introduced through an excise tax, as is

the case with tobacco products. This would have the added benefit of giving enforcement officers greater powers to take action against non-compliant products.

As well as acting as a financial deterrent for young people, it may also discourage people from purchasing as many single-use products, benefitting the environment.

However, we do believe that vapes should remain more affordable than cigarettes so as not to discourage current-smokers from swapping to vapes, and ensuring they are accessible.

Enforcement

Q25: Do you think that fixed penalty notices should be issued for breaches of age of sale legislation for tobacco products and vapes?

- Yes

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

Yes.

In order for the age of sale legislation to be effective, it is crucial to introduce fixed penalty notices to deter retailers and individuals from illegally selling tobacco products and vapes to underage people and prevent illicit products from being sold. This proposal can also increase the enforcement options available to Trading Standards to take action against those who breach age of sale regulations, particularly in light of the challenges of taking forward prosecutions.

Broader consideration of penalties and tools available for breaches of other tobacco and vape regulations is welcome.

Q26: What level of fixed penalty notice should be given for an underage tobacco sale?

- Other

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

The Government should consult with Trading Standards to determine the most appropriate level of penalties. An appropriate sliding scale should be developed for persistent offenders.

Q27: What level of fixed penalty notice should be given for an underage vape sale?

- Other

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

The Government should consult with Trading Standards to determine the most appropriate level of penalties. An appropriate sliding scale should be developed for persistent offenders.

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