



**BROUGHTON**

Testing • Consulting • Compliance

**Broughton Life Sciences' Response  
To  
UK Department of Health and Social Care  
Open Consultation  
On  
Creating a smoke-free generation and tackling youth  
vaping.**

**Prepared by:**

**Dr Nveed Chaudhary  
Chief Scientific and Regulatory Officer**

**6 December 2023**



## Statement 1:

Prohibiting anyone born on or after 1 January 2009 from ever being sold tobacco products (and also from purchasing tobacco products in Scotland) will impact children who are turning 14 or younger in 2023. Setting this date will mean the change in the law would come into effect in 3 to 4 years' time from January 2027, when this group of children turns 18.

## Question 1:

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

- Agree
- Disagree
- Don't Know

## Response 1:

- Disagree – with the application of this to heated tobacco products

## Explanation 1:

Whilst the notion of prohibiting the youngest in our society from ever being able to smoke cigarettes, cigars, and other tobacco products is, in essence, a positive public health strategy, the de-lineation cannot and should not be made based on whether the product contains tobacco or not. This is a very simplistic and prohibitionist view.

As we have come to learn over the years, it is not tobacco or nicotine that drives the morbidity and mortality associated with smoking but the fact that tobacco is combusted in order to release nicotine. Along with nicotine are, in addition, over 8,000 chemicals generated in the smoke that are harmful to health and drive pathologies associated with diseases such as Chronic Obstructive Disease (COPD), cardiovascular disease (CVD), and Lung Cancer.

Some tobacco products, such as heated tobacco products (currently available in the UK market) and Swedish snus (currently not available in the UK market), have been shown to be significantly less harmful than smoking combustible cigarettes. Therefore, a more pragmatic approach would



be to delineate sales on the basis of products that combust tobacco and those that do not. In such a scenario, we would support regulation that prohibits anyone born after 1 January 2009 from ever buying combustible tobacco products.

In order to create this delineation, it would be necessary for the UK Tobacco and Related Products Regulation (TRPR) to request scientific evidence demonstrating a lack of combustion in the heated tobacco product.

Whilst non-combustible tobacco products are less harmful than combustible cigarettes, they are by no means safe, and they are inherently more harmful than products like e-cigarettes or tobacco-free oral nicotine pouches, which do not contain tobacco. We would support a science-based risk proportionate taxation system, where the duty paid on tobacco-containing products is significantly higher than the duty paid on nicotine products that do not contain tobacco. This, we feel, balances adult consumer choice and the appropriate risks associated with different types of nicotine products.

(295 words)

---

## **Statement 2:**

Proxy sales refer to a person at or over the legal age of sale purchasing a product on behalf of someone under the legal age of sale. Proxy sales are prohibited under existing tobacco age of sale legislation. In this context, prohibiting proxy sales would mean that anyone born before 1 January 2009 would be prohibited from purchasing tobacco products on behalf of anyone born on or after 1 January 2009.

## **Question 2:**

Do you think that proxy sales should also be prohibited?

- Yes
- No
- Don't know

## **Response 2:**

- Yes



## Explanation 2:

There would be little in the way in which the law could be enforced if proxy buying for underage use was occurring. Currently, there is a ban on proxy purchases for alcohol, which, on balance, causes both direct and indirect morbidity and mortality for a large number of people. Proxy purchase for underaged individuals is not allowed for alcohol, yet it is accepted that this does still occur, although the vast majority of sales are legitimate. One could imagine a similar scenario for e-cigarettes, where, under such regulation, the vast majority of sales would be legitimate, but proxy sales are limited to a very few.

(105 words)

---

## Statement 3:

The following products would be in scope of the new legislation:

- cigarettes
- cigarette papers
- Hand-rolled tobacco
- cigars
- cigarillos
- pipe tobacco
- waterpipe tobacco products (for example, shisha)
- chewing tobacco
- heated tobacco
- nasal tobacco (snuff)
- herbal smoking products

This mirrors the current scope of age-of-sale legislation in England and Wales. Existing age of sale requirements in Scotland currently cover products consisting wholly or partly of tobacco and which are intended to be smoked, sniffed, sucked, or chewed. Insofar as the products listed would not be within the scope of the existing restrictions, it is proposed that the scope of the Scottish legislation be expanded to include them.

**Question 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

**Response 3:**

- Disagree – with application to heated tobacco products.

**Explanation 3:**

The list presented presents a range of tobacco and tobacco-associated products, indicating that they all have a similar risk profile. It is scientifically incorrect to include heated tobacco products in this list. Heated tobacco products have, since 2014, had much scientific research published in the peer-reviewed literature indicating the highly significant reductions (around 90%) in harmful and potentially harmful constituents in its aerosol compared to the levels found in cigarette smoke. The proposed policy should exclude heated tobacco products and focus only on those products that are designed to be combusted to release nicotine in smoke and then inhaled. Whilst herbal cigarettes do not usually contain nicotine, the fact is that these present an even lower benefit-to-risk argument since the harmful products of combustion are inhaled without the nicotine that smokers crave. The combustion of any organic material, not just tobacco, results in the production of these harmful chemicals, except that tobacco also contains nicotine. Heated tobacco products may indeed be required as a first step in the de-escalation of harm associated with nicotine consumption, as the experience is most like the experience of smoking cigarettes.

Chewing tobacco, whilst not inhaled, does itself carry a significant risk of oral cancers. This is not the case for Swedish snus (which is not on the list and is currently banned in the EU and UK).

Swedish snus uses pasteurised tobacco, which eliminates bacteria found on the surface of tobacco. These bacteria break down the tobacco to produce tobacco-specific nitrosamines (TSNAs), which are classified as highly carcinogenic. Since non-Swedish snus and chewing tobacco



are not pasteurised, they produce an elevated cancer risk over Swedish snus. Given this scientific basis, chewing tobacco should also remain on the list of products prohibited for purchase by those born after 1 January 2009.

(297 words).

---

#### Statement 4:

It is currently a legal requirement for retail premises to display the following statement 'it is illegal to sell tobacco products to anyone under 18'. This requirement would need to be changed to align with the new age of sale.

#### Question 4:

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

- Agree
- Disagree
- Don't know

#### Response 4:

- Disagree

#### Explanation 4:

If the government decides to implement such a policy, the warning notices should reflect the arguments raised in responses 1 and 2. The wording should be amended to convey a more accurate understanding of the risks of combustible and non-combustible tobacco products e.g., *it is illegal to sell combustible tobacco products and related accessories to anyone born after 1 January 2009.*

(61 words)

---



## Statement 5:

As well as consulting on how the UK Government and devolved administrations should restrict vape flavours, we are also asking which flavours vapes should be limited to. We are considering restricting flavours to one of the following options:

Option A: flavours limited to tobacco only

Option B: flavours limited to tobacco, mint and menthol only

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

We will also consider regulating non-nicotine vapes in the same way.

## Question 5:

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

- Agree
- Disagree
- Don't know

## Response 5:

- Disagree

## Explanation 5:

The role of flavours in helping smokers switch to e-cigarettes cannot and should not be underestimated. One of the fundamental reasons that flavours are much more attractive to current adult smokers is that they do not try to imitate the flavours of tobacco, hence the ability of a smoker to adapt to the differing experiences of vaping. A tobacco flavour invites an expectation that the vaping experience is similar to smoking, and thus, vaping always under-delivers compared to the experience of smoking combustible cigarettes. Another phenomenon that flavours play an important role in is overcoming "Taste blinding," or flavour fatigue. When a single flavour is vaped for a period of time, many users become desensitised to the flavour and can no longer taste the flavour. A sufficiently different flavour is then required to regain the sense of taste whilst vaping.



The ability to switch flavours completely keeps the experience fresh for the user, encouraging a permanent switch away from combustible cigarettes.

The premise of restricting flavours is to protect youth as opposed to providing smokers with viable alternative products that they can use to off-ramp from smoking cigarettes. A sensible approach would be to implement a secret shopping program and heavily enforce against retailers found to be selling to underage consumers. This would both protect youth as well as provide a range of flavours to current adult smokers.

(228 words)

---

### Question 6:

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

- 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

### Response 6:

- Option 1: Limiting how the vape is described

### Explanation 6:

It is appropriate to limit the flavour names, descriptors, and product presentations. It is inappropriate to believe that candy and dessert flavours are only geared toward youth. There are many adults who enjoy these flavours, too, and adult smokers should not be made to suffer from a narrowing of choice based on the inability to adequately enforce against retailers who persist in continuing to sell to underage consumers. The mere notion that some advertising campaigns (e.g., Haribo) specifically advertise candy to adults shows how important a market candy is for adults. However, restrictions on the names used and the presentation of products that are deliberately geared towards other interests that youth have should be prohibited. There are currently





guidelines published by the Committee on Advertising – Practice Code Part 22, specifically for e-cigarettes, regarding the branding and flavour descriptors for e-cigarettes and heated tobacco products. There are also clear Trademark infringements on the presentation of some e-cigarette products (figure 1), which clearly are designed to look like soft drinks. The issue again is enforcement. The biggest contributors to youth appeal and access are the lack of enforcement against retailers who sell to youth, the lack of enforcement regarding the ASA’s practice codes, and the lack of enforcement on trademark infringement. These standards must be adhered to rather than reducing the options that can be made available to smokers to help them quit combustible cigarettes.



*Figure 1: An example of a vape product available on the UK market clearly imitating the presentation of a popular soft drink.*



Option 2, should be covered by ensuring compliance with the Tobacco and Related Products Regulation (TRPR).

Option 3, is covered by the explanation given to question 5.

(260 words)

---

## **Question 7:**

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

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

## **Response 7:**

Option C with the inclusion of Candy and Dessert flavours

## **Explanation 7:**

Question 7 fails to provide an option for “none of the above” or “No restrictions.” The arguments presented in the briefing document and in the media are one of protecting youth from forming a nicotine habit through the use of e-cigarettes, or furthermore, e-cigarettes acting as a gateway to using more harmful methods of nicotine consumption (e.g. combustible cigarettes). The given responses are, therefore, biased towards the protection of youth. We believe that the most effective method of protecting youth is through the robust enforcement of current regulations (as stated in response 6). Instead of viewing this consultation as a method by which youth should be protected, we urge the DHSC to view this as a consultation to determine the best way smokers can be saved and the UK can reach a smoke-free goal by 2030. It is of no help to smokers if there are restrictions on the choices available to adult smokers to maximise the ability of smokers to transition away from combustible cigarettes permanently. Any restrictions on the availability of flavours creates this risk. Instead focus should be provided to how current regulations and standards by independent bodies can be enforced to ensure that youth do not find products appealing and ultimately cannot buy vaping products.



### Question 8:

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

Yes

No

Don't know

### Response 8:

Yes.

### Explanation 8:

Any mention or descriptors that are associated with Marijuana should be specifically restricted. There are a number of flavours now available, which are termed “replica cannabis” flavours (figure 2). Cannabis remains a controlled substance in the UK, and whilst the use of cannabis is widespread in the UK, imitation of the flavour and smell should not be permitted in e-cigarette



flavours. E-cigarettes should remain confined to flavours that help adult smokers quit smoking combustible cigarettes. The marketing of replica cannabis flavours is clearly an attempt to attract youth to be “cool,” and imitate the use of marijuana. The dangers of real CBD in vape products should also not be ignored, as highlighted by the Vitamin E acetate driven EVALI crisis in the US in late 2019.

(125 words)

Skunk - White Gold Formula e-liquid  
60% VG - 10ml

White Gold eliquids



£3.99

*Figure 2: Cannabis-imitating vape products available for sale in the UK.*

### Question 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

## Response 9:

Yes.

## Explanation 9:

In so far as the restrictions are not applied to the flavours themselves but are applied to the names and product presentation, the same restrictions recommended for nicotine-containing e-cigarettes should also be applied to non-nicotine e-liquids, shortfills, etc.

(38 words)

---

## Statement 6:

The UK Government, Scotland and Wales will also consider regulating non-nicotine vapes and non-nicotine e-liquids in the same way. The Department of Health in Northern Ireland will consider measures relating to non-nicotine vapes, following consultation. There is the opportunity to provide your opinions and evidence about this in the section on non-nicotine vapes.

There are 2 options for regulating point of sale displays of vapes:

- 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

## Question 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

**Response 10:**

Neither option 1 nor option 2

**Explanation 10:**

As was the case with combustible cigarettes, behind-the-counter space is sold by retailers at a premium, with the most direct-of-sight spaces demanding the highest prices. Such a behind-the-counter situation would raise a similar scenario with the large multinational tobacco companies (all of whom have e-cigarette products) relegating the smaller manufacturers to out-of-sight spaces behind the counter or perhaps off the display altogether. Furthermore, the rate of change in the e-cigarette market is very high, with new products being introduced all the time. It is important that potential consumers can easily interact with the products to ensure they get the information they need to make an informed decision. Having products behind the counter will prohibit this process critical for smokers to be comfortable with their alternative choice.

Furthermore, the stigma associated with cigarettes and asking for products that are both hidden and behind the counter needs to be removed for e-cigarettes as part of the encouragement process to get more smokers to transition from combustible products.

We do not support option 1, as it extends the stigma of combustible cigarettes to e-cigarettes, providing an incorrect perception that the two product classes are equally harmful. Furthermore, with the sector's innovation rate, consumers will not be aware of all of their options.

Option 2 is not supported by us since interacting with the product and making a fully informed choice is impossible if products are behind the counter.

This is no different for alcohol, which in itself is responsible for significant morbidity and indirect and direct mortality. Supermarkets have aisles of alcohol available for consumers to browse, but they can only be sold to adults over the age of 18. It should be no different for e-cigarettes.

(283 words)



## Question 11:

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

- Yes
- No
- Don't know

## Response 11:

Yes

## Explanation 11:

On the basis of Explanation 10, vape shops would not be an exception, but the process of buying e-cigarettes would be the same in supermarkets as in vape shops, with the addition of an expert who may be able to advise smokers on the best product to choose. Using the analogy of alcohol again, there is no difference in the mechanics of sales when comparing a supermarket to a wine specialist, whereas you would expect to get a little extra advice from a wine specialist.

---

## Question 12:

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

## Explanation 12:

Sticking with the analogy of alcohol, a sensible approach for the sales of e-cigarettes may be introduced by a licensing law. As with alcohol, a licensing body would be responsible for helping enforce against underage sales laws, and licenses can easily be suspended for offenders or revoked for repeat offenders. The licensing procedure would result in the e-cigarette retail industry self-policing itself, reducing the burden on local authority trading standards officials enforcing regulative law.

(74 words)

---



## Statement 7:

The UK Government, Scotland and Wales are considering further regulating the packaging of vapes. The Department of Health in Northern Ireland will consider measures relating to regulating vape packaging following this consultation. We want to ensure that no part of the vape device, nor its packaging, is targeted at children. This includes:

- any unit packet (first wrap or container of an item)
- any container pack (the portable device in which a material is stored, transported, disposed of or handled)
- the presentation of the vape device

There are several possible options for how packaging and presentation of vapes can be restricted.

**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. This would still allow for branding, such as logos and names.

**Option 3:** prohibiting the use of all imagery and colouring and branding for both the vape packaging and vape device. This is equivalent to the standardised packaging rules on tobacco.

**Question 13:**

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

- 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 brandings 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

**Response 13:**

Option 1

**Explanation 13:**

With the pace of innovation, it would become very difficult for brands to adequately attract and promote themselves to current adult smokers with plain packaging (Option 3) or with the prohibition of using imagery on the packaging (Option 2). It is vitally important that current smokers are made acutely aware of new options to help them quit smoking combustible cigarettes. It is, however, wise to prohibit any imagery which does or may be perceived to appeal to underage consumers. Some recent examples of vape devices resembling cartoon or video game characters are a disgrace to the industry and clearly must not be allowed. The use of names that resemble the names of soft drinks, along with accompanying imagery, could be potentially infringing trademarks and should be enforced against. The guidelines published by the Committee on Advertising provide an excellent basis for the guardrails DHSC could recommend for the restriction on the packaging and product presentation of e-cigarettes.

(157 words)



**Question 14:**

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

**Response 14:**

No response.

---

**Statement 8:**

The UK Government, Scotland and Wales are considering restrictions on the sale and supply of disposable vaping products (including non-nicotine vapes), including prohibiting the sale of these products, due to the environmental impacts of disposable vapes. Northern Ireland will consider measures relating to disposable vapes following this consultation.

The approach to the enforcement of any restrictions would be a matter for individual nations, with civil sanctions such as fixed penalty notices being the preferred enforcement mechanism where appropriate.

**Question 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

**Response 15:**

Disagree



## **Explanation 15:**

Disposable vapes provide the most similar experience to smoking cigarettes, and for this reason, they offer a powerful alternative for current adult smokers to switch to. The behavioral element of treating vapes as another consumer electronics product and ensuring charging etc., is perceived by some smokers as an additional burden and hence a barrier to transition away from combustible cigarettes. As such, disposable vape products hold an important place in realising a smoke-free UK. Furthermore, without the availability of disposable vapes, ex-smokers may find themselves in social situations whereby a device runs out of charge or e-liquid, and in the absence of being able to easily buy another disposable, there is a high risk that they may revert back to smoking combustible cigarettes.

That being said, the environmental burden of plastic and battery waste from these products cannot be ignored. Rather than implementing a straightforward ban on disposable vapes, it would be prudent to implement regulation whereby a large proportion of the materials used in vape devices are recyclable or recoverable. There are already companies that have developed such devices, but what is also missing are recycling schemes, where it is easy for these to be collected and processed for recycling or material recovery. Analogous to the coffee Nespresso pods, many local authorities now have schemes where used coffee pods can be collected for recycling/recovery. The smoke-free regulation proposed by DHSC should include the necessity for 1. All disposable products to transition to the use of recyclable and recoverable materials by a specified date, and 2. The establishment of local authority recycling and recovery schemes for such products.

Given the current concerns around youth use of disposable products, we feel that a licensing law for the sale of all e-cigarettes, including disposables, is a more pragmatic approach (see explanation 12).

(300 words)

---

## **Question 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

## Response 16:

Disagree

## Explanation 16:

Prohibition always leads to the creation of an illicit market. There are many countries in the world where vapes in general, are prohibited, but the illicit market operates very successfully and profitably. Furthermore, since disposable vapes are often the cheapest and the products with the highest profit margins, the illicit market is likely to be perpetuated by such products. We already see the ease with which illicit vape products (those not compliant with TRPR) can be browsed and purchased on the internet. Prohibiting the sale and supply would only serve to feed the illicit industry, which would lead to an increase in underage sales, and does not remove the problem of the environmental waste.

(114 words)

---

## Question 17:

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

## Response 17:

No

---

## Question 18:

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

- Agree
- Disagree
- Don't know

**Response 18:**

Agree

**Explanation 18:**

In so far as we do not agree with the principle of banning disposable vapes, the types of restrictions highlighted in Explanation 15 - time is needed to implement and subsequently enforce. Whilst there are some companies that already have implemented the use of recyclable and recoverable materials in the manufacture of their disposable products, the industry requires time to determine, 1. More efficient ways in which these types of materials can be used, 2. Navigation of any patents, which would be a barrier for other manufacturers to use similar materials, and 3. the setup of recycling and recovery programs by local authorities allowing for the correct processing of these products once disposed of.

It would be up to the DHSC to determine a timeframe for the adequate infrastructure to be established, but a timeframe of 12-18 months seems to be a reasonable compromise.

(144 words)

---

**Question 19:**

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

**Response 19:**

Yes – differential taxation

**Explanation 19:**

It is right that the duty on combustible products today is high. However, it would be necessary to describe a risk-proportionate duty band based on the inherent risk of the nicotine product. In order for this to be effective, it is necessary to consider the relative risk of different nicotine products, often presented as a nicotine product risk spectrum (e.g., figure 3, which is taken from Abrams et al. 2018<sup>1</sup>). The most harmful form of nicotine use is through combustible cigarettes, which use a combination of combusted tobacco and inhalation of nicotine and the harmful

---

<sup>1</sup> Abrams, D.B., Glasser, A.M., Pearson, J.L., Villanti, A.C., Collins, L.K., Niaura, R.S. Harm Minimization and Tobacco Control: Refraining Societal Views of Nicotine Use to Rapidly Save Lives. *Ann. Rev. Public Health* 2018;39:193-212. Doi: 10.1146/annurev-publhealth-040617-013849



# BROUGHTON

Testing • Consulting • Compliance

particulate matter into the delicate structure of the deep lung (alveoli). The risk spectrum then shows that the use of tobacco is always more harmful than using just nicotine alone and that inhalation is always more harmful than oral use, where nicotine is absorbed through the oromucosal membrane. Finally, nicotine products (absorbed through the oromucosal membrane or the skin), which are medically approved, are the least harmful way of using nicotine. A tax structure that is aligned with the relative harm of the product is not only fair but also serves as a very powerful communication tool regarding the relative risk of products compared to combustible products.

Furthermore, a tax structure related to Harm to the environment could be layered on top, where vape products that are not made of recyclable or recoverable material should be taxed higher than products that are. This would promote the sales of more environmentally friendly products during the time when the government might be implementing policies aligned with explanation 18.

(263 words)

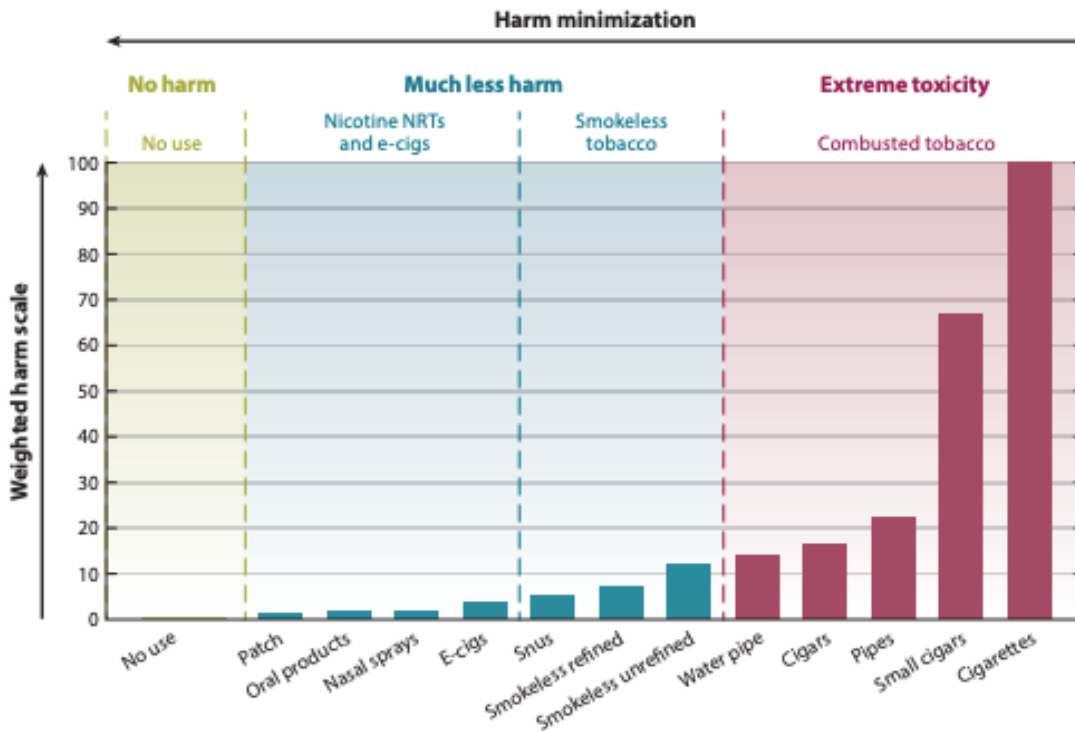


Figure 3: The Nicotine Product Risk Spectrum populated with a range of product classes including combustible cigarettes (far right) and medically-approved NRT (far left).

### Statement 9:



# BROUGHTON

Testing • Consulting • Compliance

Non-nicotine vapes (or nicotine-free vapes) are covered by the General Products Safety Regulations (GPSR) 2005 in the UK.

Like nicotine vapes, they can come in liquid form to be used in a device or already contained as a liquid in a device. There are 3 categories of these types of non-nicotine vapes:

- shortfill and longfill vapes
- disposable (single-use) vapes
- alternative non-nicotine vapes

Alternative non-nicotine vapes are often advertised as wellness vapes. They are not currently subject to the same age restrictions or product standards as nicotine-containing vapes and there are some calls for non-nicotine vapes to be regulated in the same way as nicotine vapes.

There is evidence that children are accessing these products and the UK Government and devolved administrations want to prevent potential future health harms from non-nicotine vapes. Scotland has already introduced age of sale requirements for non-nicotine vapes.

So, the UK Government and the Welsh Government will seek to introduce legislation to prohibit the sale of non-nicotine vapes to under 18s as a first step to protect children from accessing and using these vapes. The Department of Health in Northern Ireland will consider measures relating to non-nicotine vapes to under 18s following this consultation.

The UK Government and devolved administrations are also interested in views on whether we should also impose further restrictions on non-nicotine vapes that we have outlined in this consultation for nicotine vapes.

**Question 20:**

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

- Yes
- No



- Don't know

## Response 20:

No

## Explanation 20:

There is no published evidence to my knowledge on the harms associated with non-nicotine containing e-liquids. However, it should be noted that as a career-time student of lung disease, it is clear that the best health outcome for anyone is to inhale nothing but air into the lungs. There is, of course, an acceptable risk for smokers to inhale e-liquid containing nicotine in order to deliver nicotine in a much less harmful medium compared to smoke from a combustible cigarette. Any potential small amounts of structural damage that occurs through vaping is outweighed by the harm that would otherwise be caused by inhaling cigarette smoke. It is important to reiterate that it is not the nicotine in smoke that causes harm but the thousands of chemicals produced as a result of the combustion of the tobacco. In a similar vein, there will be some small harm caused by inhaling e-liquid as a foreign material into the delicate alveoli, but without the nicotine, there is no additional benefit, except for ex-smokers who have gradually reduced their nicotine level to 0mg/mL and use nicotine-free liquid to simply reenact the “hand-to-mouth” habit and hence keeping them off using combustible cigarettes.

Furthermore, other forms of non-nicotine vapes include cannabis and CBD vapes. The research on the vaping of cannabis through e-cigarette technology is not well established, and whilst cannabis remains a controlled substance, cannabis vape products should be prohibited. CBD vapes are also easily purchased, and the dangers of CBD vapes, through the use of vitamin E acetate as a solvent was responsible for the EVALI crisis in the US in 2019. CBD Vapes should also be prohibited.

(274 words)

---

## Question 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

## Response 21:

Yes

## Explanation 21:

As explained in explanation 20, non-nicotine e-liquids should not be treated any differently than nicotine-containing e-liquids and should simply be seen as an extension to the range of nicotine-containing e-liquids as an option for those who want to taper off the amount of nicotine they consume, but still require the act of smoking to remain off combustible cigarettes. Cannabis vapes should be prohibited on the basis that cannabis remains a controlled substance and the science of cannabis vape inhalation is poorly understood. Given the historical issues with EVALI in the US, CBD vapes should also be prohibited.

(97 words)

---

## Question 22:

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

## Response 22:

Yes



**Explanation 22:**

Since nicotine pouches do not contain tobacco, they are currently not covered by the EU-wide and UK laws banning oral tobacco products. Since they are not an e-cigarette, they are not regulated under TRPR. Therefore, nicotine pouches sit in a regulatory void, which means that technically, it is even possible for youth to purchase these products legally. Clearly, this situation cannot persist, and given the track record of nicotine pouches to help people stop smoking, they are an extraordinary opportunity to help the UK realise a smoke-free 2030. The introduction of nicotine pouches in Sweden (where Oral snus containing tobacco are permitted) helped accelerate the country's status to becoming smoke-free earlier in 2023.

The first step would be to bring nicotine pouches under a regulation aligned with e-cigarettes, followed by strict enforcement against underage sales. Without this, there is a real danger that nicotine pouches will fall foul of the same issue that disposable vapes fell into with regard to youth use. We already see some irresponsible manufacturers of disposable vapes pivoting to inappropriately presented nicotine pouches to exploit this regulatory void (figure 4). Action is required now to ensure that underage use does not become an issue in the UK and that they are presented as a legitimate alternative for smokers. The lack of tobacco and the lack of inhalation puts these products at the very left of the nicotine product risk spectrum (figure 3) adjacent to medicinal nicotine replacement therapies.



*Figure 4: An example of irresponsible product presentation currently being used to promote nicotine pouches in a currently unregulated market in the UK and EU.*



## Statement 10:

Disposable vapes are considerably cheaper to buy than other vape products. The most popular disposable vape among young people in 2022 was the Elf Bar, which costs around £5, compared to a reusable Elf Bar which costs around £8. Mod or tank devices vary in price, but are in the region of £40 to £50, with additional costs for the e-liquid.

Table 1: average cost of vapes across different product categories

Product category	Unit cost (average)
• Disposable	£6
• Reusable: pre-filled pod kits	£12
• Reusable: vape kits (refillable cartridges)	£40

## Duty and taxes on vapes

Fifteen European countries including Germany and Italy have introduced a national tax on vapes and Canada has introduced a vaping duty. American research on the intended and unintended effects of e-cigarette taxes on youth tobacco use shows that taxes on vapes are associated with reductions in vaping, but at the potential risk of increasing youth smoking.

## The effect of increasing the prices of vapes

The majority of respondents in DHSC's youth vaping call for evidence (64%) said price increases would reduce the demand for vapes. Thirty-six per cent of respondents said vapes are affordable and within the average child's buying power and that price has a significant impact on the appeal of vapes, with a further 22% stating that disposable vapes specifically are affordable.

A quarter of respondents thought there was a risk that price increases may have a negative impact on smoking cessation progress, given the use of vapes as an aid to quit smoking. Eleven per cent of respondents stated that the price differential between vapes and cigarettes increased the appeal of vaping.



## Policy considerations

This consultation covers a range of measures to reduce the appeal and availability of vapes to children. To support this agenda, the UK Government thinks that there is a strong case to take action on affordability and so is exploring options, including a new duty on vapes as other countries have done, while ensuring that there is a significant differential between duty on vapes and duty on tobacco products

### Question 23:

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

### Response 23:

Yes

### Explanation 23:

As highlighted in explanation 19, nicotine containing products should be taxed in proportion to the relative harm they pose compared to combustible cigarettes. It is clear that the current issue in the UK with the youth use of disposable e-cigarettes comes as a result of a combination of irresponsible product presentation (making it appealing to youth), irresponsible sales by some retailers and a lack of enforcement against it and the very low price of disposable vapes.

Therefore, an increase in price would be one of the levers that could be pulled to reduce the likelihood of youth use. It is however not the only lever, and any price increases would need to be a part of a holistic policy. A risk-proportionate taxation system (including a hike in the taxation on combustible cigarettes) would further deter both adult and young people smoking them, and an increase in price of alternative nicotine products would have more of an effect on underage consumers.

(162 words)



## Statement 11:

Local authorities take a proportionate approach to enforce age of sale restrictions on tobacco products and vapes, that reflects the level of offence committed. For example, in England, penalties can be escalated, starting with a warning through to a maximum fine of £2,500. In the case of the most serious or repeat offences, local authorities can apply for a court order to prevent the offending retailer from opening for a period of time.

The current penalty regime requires local authorities to prosecute the individual or business in question and for the individual or business in question to be convicted in a magistrates' court. Trading standards officers say this time-consuming court procedure limits their ability to issue fines and is a significant gap in their operational capabilities.

## Question 24:

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

## Response 24:

Yes

## Explanation 24:

Escalating fixed penalty notices with a Three-strike and out rule may act as a deterrent to retailers engaging in underage sales. But this needs to be combined with effective enforcement, a fine with significant financial impact, and the possibility of losing a trading licence together with the licencing laws (explanation 12) in order for it to be effective and deter sales to young people.



**Question 25:**

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

- £100
- £200
- Other

**Response 25:**

Other

**Explanation 25:**

To deter the sale of nicotine products to minors, a system of escalating fines has been proposed. The first offense would result in a fine of £1000, the second offense would result in a fine of £5000, and the third offense would lead to the revocation of the nicotine product trading license. This system would require proper enforcement and a licensing structure similar to that of alcohol sales.

(68 words)

---

**Question 26:**

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

- £100
- £200
- Other

**Response 26:**

Other

**Explanation 26:**

Underage sales of all nicotine products should be treated no differently from tobacco, with the same fixed penalty scheme as described in Explanation 25.

(24 words)

---

END