

Consultation overview

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

1. Creating a smokefree generation: on smoking, the case for change is clear and the UK Government and devolved administrations are consulting on the smokefree generation policy and its scope to inform future legislation.
2. Tackling youth vaping: while there is also significant evidence for action to tackle youth vaping, within each proposal the UK Government and devolved administrations are 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](#).
3. Enforcement: the consultation also asks questions 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.

The UK Government and devolved administrations would like to understand the impacts on businesses and on people, and if there are any impacts on groups with protected characteristics (see [Discrimination: your rights](#)). We want to hear from:

- the public - from young people, parents, carers and teachers
- the retail sector and the independent vaping industry
- local authorities across the UK
- clinicians and medical professionals
- public health stakeholders and academic experts
- employers and trade unions

The UK Government and devolved administrations would like to receive as much detail as possible under each of the themes of the consultation. For each multiple choice question, you will be able to provide additional information and evidence to support your answer through free text boxes.

The UK Government and devolved administrations will only make any decisions on these proposed measures after fully considering:

- the consultation responses we receive
- the evidence provided in those responses
- a further review of the international evidence base

Following this, impact assessments will be published.

The UK Government, Scottish Government and Welsh Government intend to bring forward legislation as soon as possible. In Northern Ireland, the outcome of this

consultation will inform decisions of incoming ministers and the Northern Ireland Executive, or in the absence of ministers, those decisions that can be taken under the [Northern Ireland \(Executive Formation etc\) Act 2022](#). This applies to all proposals in the consultation document.

Consultation Questions

All questions below are proceeded with: Please explain your answer and provide evidence or your opinion to support further development of our approach. (maximum 300 words)

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

Proposed Board Response: No response, not covered by previous Board discussion.

2. Do you think proxy sales should also be prohibited?
 - Yes
 - No
 - Don't know

(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.)

Proposed Board Response: No response, not covered by previous Board discussion.

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

Proposed Board Response: *No response, not covered by previous Board discussion.*

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

Proposed Board Response: *No response, not covered by previous Board discussion.*

Vaping:

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

- Agree
- Disagree
- Don't know

Proposed Board Response: Agree – *Given the negative health impacts of vaping on young people the Children and Families Scrutiny Board believes that restricting vape flavours and preventing the sale of flavours that resemble sweets or sweet flavours will deter children and young people from vaping. Vape flavours are clearly aimed at attracting young people to vaping and the wide variety of flavours available also encourages users to try different flavours and encourage others to try new or 'different' flavours. We do not believe it is acceptable to market vapes at children and young people and this is one of the methods used to do that.*

Vaping is an effective tool to reduce smoking rates and any measures taken should be mindful of any possible unintended consequences on the aim to reduce smoking rates.

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

Proposed Board Response: All three options – *The use of exotic flavours and flavours that can be described in a similar way to sweets and sold in shops that in some cases also sell sweets clearly encourages young people to use vapes and can lead to more regular use rather than simply experimentation as users try the different flavours and can hear through word of mouth about new flavours. Names and descriptions such as custard creams, citrus explosion, red solero and berry blast either mimic or partially mimic existing sweet products or are designed to be marketable and potentially appealing to young people.*

Ingredients in vapes need to be regulated more tightly and the Board is concerned about the availability of illicit vape products that can be widely available and contain dangerous ingredients such as lead and nickel and could have higher nicotine concentration levels, contain banned ingredients or have oversized tanks for nicotine liquid.

The characterising flavours are also a concern one of the main deterrents to smoking is the taste of cigarettes, on first try cigarettes do not taste or smell nice. With some vape flavours being appealing in smell and taste this deterrent is lost and could lead to greater levels of nicotine addiction both now and in the future. The Board also believes that some of the problems posed by vapes are similar to those issues that presented when alcopops were heavily promoted and popular in the 1990s and were used as a means to encourage young people to drink through marketing and advertising that was designed to attract them to alcohol. Taxation and regulation of marketing were used to reduce appeal and usage amongst young people.

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

Proposed Board Response: Option C – As noted in question 5 and 6 The Board is concerned about the description and marketing of vapes at children and young people and would like to see this tackled as a priority. However, it is clear that adults are using vapes as a means to quit smoking and any measures that are aimed at restricting flavouring should be mindful of that particularly given evidence that adults do access fruit based vape flavours. However, it is clear that brightly coloured fruit flavoured vapes are very popular with young people so measures to tackle that including curbs on marketing, advertising and packaging could be a first step before moving on to consideration of reducing the number of flavours that are available.

Any measures to reduce available flavours would need to be balanced with any impacts on the number of adults accessing vapes to quit smoking. As already noted the Board is concerned that vapes can taste and smell pleasant as opposed to cigarettes that on first try have an unpleasant smell and taste.

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

- Yes
- No
- Don't know

Proposed Board Response: No – There is evidence that smoking related flavours such as tobacco and mint are not popular with young people and that fruit flavours are much more appealing, with approximately 60% of young people saying that they prefer fruit flavouring. On that basis the scrutiny board does not believe that further flavouring options should be explored by Government. Indeed, depending on the impact on adults seeking to quit smoking consideration of reducing flavouring availability would be the preferred direction of travel certainly in terms of reducing 'catchy,' marketable names but potentially also available flavours.

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

Proposed Board Response: Yes – During its consideration of these issues the scrutiny board heard that the health impacts of vaping are not yet fully understood, only that vapes are considered to be much less harmful than smoking tobacco. Nicotine addiction amongst young people is also a serious concern arising from the increase in vape usage and whilst non-nicotine versions of the product would negate that concern the uncertainty around health impacts suggest that measures to restrict nicotine based versions should also apply to their non-nicotine counterparts. In short vaping of any description is not risk free and is potentially harmful.

Regulating point of sale displays

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

Proposed Board Response: Option 1 – Whilst recognising the need to ensure adults can access vapes as a smoking cessation aid there is an equally compelling need to prevent children and young people being attracted to vaping products. Clear messaging to adults around the continued availability of vapes should assist if option 1 were pursued. The Board was of the view that strong action on advertising and marketing should be taken to prevent the continued growth in youth vaping and option 1 would be the best method to deliver that.

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

- Yes
- No
- Don't know

Proposed Board Response: Yes – Exemptions could work for those businesses that specialise in selling vape products but would need to be coupled with measures to reduce on street advertising and in particular brightly coloured, hard to miss shop windows often used by specialist vaping shops. In addition, measures to prevent access to specialist shops by children and young people might be considered. The Board is clear that advertising and marketing is a real issue and strong measures should be taken to reduce this both in shops and how they impact on the street scene.

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

Proposed Board Response: N/A – The Board supports additional regulation on point of sale displays.

Regulating vape packaging and product presentation

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

Proposed Board Response: Option 3 – Given the alarming growth in use of vape products by children and young people and concerns raised by the Board in relation to the accuracy of data on youth vaping, the belief being that the figures are low in terms of usage, the strongest measures on packaging and product measures should be taken which are found in option 3. Again, the possible unintended consequence of impacting adult smoking cessation rates will need to be monitored closely.

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

Proposed Board Response: N/A – The Board does support additional regulation on vape packaging.

Restricting supply and sale of disposable vaping products

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

Proposed Board Response: Agree – Given the strong evidence from Ash on a national level and the My Health, My School surveys carried out in Leeds that indicate that disposable vapes are by far the most popular vaping product for children and young people restrictions on sale of disposable vapes should be introduced. The ongoing implications of youth vaping in terms of nicotine addiction amongst children and young people are significant and strong action is needed to prevent that as quickly as possible.

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

Proposed Board Response: Agree – During discussion on youth vaping the Board had clear concerns about availability and accessibility of disposable vapes and the environmental impact these have in and around school premises and in the wider community. To prevent harm to children and young people and to reduce environmental impacts disposable vape products should be made illegal.

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

Proposed Board Response: Other products that could replace vapes in this market area should also be part of new restrictions, devices such as nicotine pouches and other similar products should be included. The Board has concerns about nicotine addiction amongst this generation of children and young people so other products similar in nature should be included.

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

Proposed Board Response: Agree – Urgent action is needed on disposable vapes and the whole issue of youth vaping so a swift approach to banning disposable vapes should be pursued. However, in addition to this the existing loophole on gifting vapes, which enables legal gifting of vapes to children and young people needs to be addressed with immediate effect.

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?

Proposed Board Response: Litter picking groups that operate in communities in Leeds are reporting a huge increase in disposable vapes being found littered in communities and near to schools, urgently restricting sale and supply would bring clear and immediate environmental impacts, it is estimated that 5 million vapes per week are being discarded restricting availability would therefore bring clear environmental benefits.

Non-nicotine vapes and other consumer products

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

Proposed Board Response: Yes – The Board heard evidence that suggested that children and young people do not always use vapes that contain nicotine and given uncertainty around health impacts of vaping the Board believe that the Government should also act to prevent uptake of non-nicotine vapes by children and young people.

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

Proposed Board Response: Yes – *As noted above vaping is not without risk and is potentially harmful so any measures taken on nicotine based products should be applied consistently on all vape 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

Proposed Board Response: No - *This was not specifically covered in the Board's consideration of this matter. However, products that deliver nicotine and can cause addiction were clearly an area of concern and therefore the Board believes that any measures taken on vapes should also be applied to other products containing nicotine.*

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

Proposed Board Response: Yes - *Products that deliver nicotine and can cause addiction were a clear area of concern and therefore the Board believes that any measures taken on vapes should also be applied to other products containing nicotine that could be marketed or targeted at children and young people.*

Increasing price on vapes

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

Proposed Board Response: Yes – During consideration of the impact of vaping on children and young people the Board had clear concerns around the low costs of disposable vapes with their pricing being within the budget that children and young people typically have. It was noted that the non-disposable versions of vapes require an up front costs in addition to ongoing costs which could contribute to those being considerably less popular amongst young people. Therefore, taxation or an increase in price were considered to have potential in reducing youth vaping.

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

Proposed Board Response: Yes – The role of trading standards and the need for stronger action on youth vaping through enforcement is a key element of preventing access and usage of these products. The Board were concerned about reports of vapes being more accessible in Leeds City Centre and supported stronger measures to tackle this through Trading Standards and the Police where appropriate. As noted above illicit products are a real concern given the content of them in terms of harmful ingredients, stronger enforcement powers would be an important deterrent in reducing that illicit market.

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

- £100
- £200
- Other

Proposed Board Response: *No response, not covered by previous Board discussion which was focussed on youth vaping as opposed to tobacco sales.*

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

- £100
- £200
- Other

Proposed Board Response: **Other** – *Enhanced co-ordinated working between agencies to tackle the harms caused by youth vaping should be introduced as a matter of urgency with Trading Standards playing a key role in that. The Board was clear that more enforcement is needed and should be prohibitive in terms of the penalties faced by offenders and be sufficiently high to be an effective deterrent to underage sales, which may be potentially higher than the £200 figure listed.*

How to respond

This consultation seeks feedback on the proposed measures, to inform future legislation. On youth vaping, there are a number of options proposed, to ensure the UK Government and devolved administrations take the most appropriate and impactful steps, building on existing evidence.

The consultation closes on 6 December 2023 at 11:59pm and you can respond via our [online survey](#).