

Tightening rules on advertising and promoting vaping products

September 2022



**The Scottish
Government**
Riaghaltas na h-Alba



Tightening rules on advertising and promoting vaping products

Report prepared by: EKOS Ltd.

The opinions expressed in this report are those provided by respondents to the call for evidence.

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1 Executive Summary

Introduction

This executive summary presents the main findings of the Scottish Government vaping products - tightening rules on advertising and promotion consultation¹. The consultation ran from 3 February 2022 to 29 April 2022 on the Scottish Government Citizen Space website. The consultation sought views on proposed regulations which aim to strike a balance between protecting non-smokers and making information available to smokers. The responses and consultation analysis will help the Scottish Government to finalise the scope of these regulations.

A total of 757 validated responses were received to the consultation and the vast majority were from individuals – there were 43 organisational responses. Organisations that submitted a response include local government, health organisations, the tobacco industry, the vaping sector, and other organisations (e.g. those that sell tobacco and vaping related products).

The consultation attracted polarising views.

Individual respondents can be categorised into two main groups:

- Smokers, ex-smokers, dual users (i.e. electronic cigarette users and cigarette smokers), and those who only use vape products and/or who know someone who uses vape products.
- Those who feel that current advertising and promotion of vaping products is too attractive/appealing to children, young people, and adult non-smokers. This includes parents/guardians, teachers, and those who work in a health setting.

Individual responses to closed questions in the consultation are typically split 50:50 (i.e. roughly the same proportion of individuals support the Scottish Government proposals as those individuals who do not support the proposals).

In terms of organisation respondents, those who support the proposals outlined in the consultation document are in the main local government and health organisations. Those organisations who are less likely to support the proposals are the vaping sector, tobacco industry, and other organisations (e.g. those that sell tobacco and vaping related products).

The percentages reported in the Executive Summary may not always total 100%. We report on the proportion of respondents who “support”/“agree” or “do not support”/“disagree” with each proposal. The remainder of respondents answered “don’t know” to the closed questions. For each question, we also present a summary of the qualitative feedback received from respondents to open-ended questions (i.e. free text questions).

There was a technical problem with the Citizen Space website. It was not possible for respondents to submit an open-ended response (i.e. free text) to Question 2 (Do you agree with proposal to extend restrictions on advertising these products in the ways described above?) or Question 3 (Do you agree with proposal that in-store promotional displays should be banned?). While it was possible for all respondents to answer the closed questions, the qualitative analysis presented in this report for these two questions is limited to non-Citizen-Space submissions.

¹ The Scottish Government, [Vaping products - tightening rules on advertising and promotion: consultation 2022](#).

Despite this limitation many of the points made are echoed in later sections of the consultation so this is not felt to be a significant limitation of the consultation.

Question 1: Do you agree that we should be seeking to limit use of these products as a cessation aid and restrict exposure to them by non-smokers?

The views of respondents are mixed.

Overall, 50.7% of all respondents agree that the Scottish Government should seek to limit use of these products as a cessation aid and restrict exposure to them by non-smokers. The level of support among organisation respondents is higher than among individual respondents (73.2% and 49.4% respectively). The main points put forward by all respondents in support include that: adult smokers should be able to make informed decisions on the options available to them to stop smoking; it would limit the promotion and appeal of vaping products to people who have never smoked and young people; and to improve public health.

Almost half of all respondents disagree with the proposal (47.6%). Individuals are more likely than organisations to disagree (49.1% and 22.0% respectively). The main points put forward by all respondents who disagree with the proposal include: freedom of choice; the need for adult smokers to have sufficient information to make an informed choice; a need to further promote the benefits of vaping over smoking; and that vaping products are a consumer product.

Question 2: Do you agree with the proposal to extend restrictions on advertising these products on billboards and advertising hoardings, on buses and vehicles, on leaflets and flyers and on moving video advertising apparatus?

The views of respondents are mixed.

Overall, 48.5% of all respondents agree with the proposal to extend restrictions on advertising vaping products. The level of support among organisation respondents is higher than among individual respondents (58.1% and 47.9% respectively). The main points raised by those respondents in support include that it would: have a positive impact on children and young people (e.g. reduced visibility of vaping products would mean they may be less likely to try them); ensure advertising does not directly or indirectly target or appeal to children, young people, and adult non-smokers; and help to reduce health harms.

A similar proportion of all respondents disagree with the proposal (48.2%). Individuals are more likely than organisations to disagree (49.0% and 34.9% respectively). The main points raised by respondents who disagree with the proposal include that: there is an existing strong regulatory framework; there is a risk that the proposal could undermine public health; it would reduce the visibility of vaping products to adult smokers looking to move away from smoking; and it could worsen perceived existing high levels of misinformation on the relative harms of vaping and smoking.

Question 3: Do you agree with the proposal that in-store promotional displays should be banned?

Responses are mixed, however, more respondents do not support the proposal.

Less than half of all respondents agree with the Scottish Government proposal that in-store promotional displays should be banned so they are not used as an alternative means to advertise these products (44.8%). The level of support among organisation respondents is higher than among individual respondents (61.9% and 43.8% respectively).

The main point raised by all respondents in support of the proposal is reduced visibility and accessibility of vaping products to non-smokers.

Over half of all respondents disagree with the proposal (53.8%). Individuals are more likely than organisations to disagree (54.8% and 35.7% respectively). The main points raised by those respondents who disagree with the proposal are a repeat of views raised to earlier consultation questions. This includes: an existing strong regulatory framework; further regulation is considered disproportionate; challenges in implementation; a perceived insufficient evidence base; and it could worsen perceived existing high levels of misinformation. An increased focus on reducing the appeal of e-cigarette products to unintended audiences and ensuring existing regulations are sufficiently enforced were noted by some organisations to be more appropriate.

Both those respondents who support and those who do not support the proposal call for further clarity and guidance from the Scottish Government on the proposal. For example, some respondents asked in their response whether there would be any exemptions within specific settings.

Question 4: Do you support the proposal to make brand-sharing an offence?

The views of respondents are mixed.

Overall, 47.9% of all respondents support the Scottish Government proposal to make brand-sharing an offence. The level of support among organisation respondents is higher than among individual respondents (73.7% and 46.6% respectively). The main points raised by those respondents in support of the proposal are: there is a duty to protect children and young people as some groups find this advertising more appealing and attractive; it is felt to be a proportionate approach; and it would bring this advertising in line with that for tobacco.

A slightly smaller proportion of respondents do not support the proposal (44.6%). Individuals are more likely than organisations to not support the proposal (46.1% and 15.8% respectively). The points raised by those respondents who do not support the proposal echo views that have been outlined to earlier questions. Additional points raised include: brand-sharing is not considered commonplace in the industry; additional regulation is felt to be disproportionate; the important role of Trading Standards in tackling breaches of current regulation; and a perception among some individual respondents that the proposals amount to scaremongering.

Question 5a: Do you support the proposal to make free distribution of vaping products an offence?

The views of respondents are mixed but with more against the proposal.

Less than half of all respondents support the proposal that free distribution of vaping products should be an offence (42.7%). The level of support among organisation respondents is higher than among individual respondents (68.4% and 41.4% respectively). The main point raised by those responding positively is that any free distribution of vaping products should be limited to the NHS or charities to prevent free distribution of vaping products to children and non-smokers. There is, however, some concern that a blanket ban on commercial organisations may be inappropriate and exemptions could be considered e.g. elderly and mental health residential settings were raised by respondents.

Over half of all respondents do not support the proposal (53.5%). Individuals are more likely than organisations to not support the proposal (55.0% and 26.3% respectively).

The main reason put forward by those respondents who do not support the proposal is that the free distribution of vaping products allows smokers to sample them, and raises awareness of, and encourages take up of vaping. There is, however, broad support among these respondents that free distribution should be limited to over 18s.

Question 5b: Do you support the proposal that nominal pricing of vaping products should be an offence?

Just over one-third of all respondents support the proposal that nominal pricing of vaping should be an offence (36.8%). The level of support among organisation respondents is higher than among individual respondents (63.2% and 35.4% respectively).

It should, however, be noted that there may have been some confusion with this question. The question is designed to ask views on the practice of cutting prices (e.g. say from £50 to £15) on kit to encourage people to try the products and buy them. Some respondents have interpreted this question, for example, to concern offering end of stock items at lower prices. The main point raised by respondents in support of the proposal is that nominal pricing should be restricted as it is used to attract children and teenagers to start vaping. Respondents' views were that a lower price makes it more affordable and attractive for these age groups.

Just under two-thirds of all respondents do not support the proposal (60.1%). Individuals are more likely than organisations to not support the proposal (61.7% and 31.6% respectively). The main points raised by those responding in this way are similar to responses for Question 5a - respondents believe that nominal pricing will widen access to vaping to adult smokers and should therefore be encouraged.

Question 6: Do you support the proposal to make sponsorship agreements in respect of vaping products an offence?

The views of respondents are mixed.

Less than half of all respondents support the proposal to make sponsorship agreements in respect of vaping products an offence (44.9%). The level of support among organisation respondents is higher than among individual respondents (73.0% and 43.5% respectively). A prevalent view among organisation and individual respondents is that a ban in sponsorship arrangements is necessary to protect children and non-smokers from being exposed to vape product advertising. These respondents express concern that vape product sponsorship of sports teams, music events or nightclubs glamourises vaping and encourages uptake amongst young people and non-smokers.

Just under half of all respondents do not support the proposal (48.7%). Individuals are more likely than organisations to not support the proposal (50.2% and 18.9% respectively). The main point raised by those responding in this way is that if sponsorship encourages the take up of vaping amongst adult smokers, then this is a positive thing (e.g. as a route to stop smoking or to denormalise tobacco products).

Question 7: Do you support the proposal to introduce exemptions to allow advertising at trade-only events?

There is broad support for the proposal among respondents.

Under two-thirds of all respondents support the proposal to introduce exemptions to allow advertising at trade-only events (60.2%). The level of support among organisation respondents is higher than among individual respondents (73.0% and 59.5% respectively).

There appears to be some confusion among respondents with this question as 75% of qualitative comments from those that do not support the proposal (i.e. answered “No” to the closed question) make points in support of it. It is therefore likely that support may be higher than 60.2%. The main points raised by these respondents are that this type of advertising is beneficial to get smokers to take up vaping and move away from tobacco, and that there is not much point in having a trade show if advertising at it is to be banned.

Just over one-quarter of all respondents do not support the proposal (27.9%). Individuals are more likely than organisations to not support the proposal (29.0% and 8.1% respectively). Among those respondents that appear to genuinely oppose the proposal, the main comments are that there should be a blanket ban on advertising vaping products and there should be no exemptions due to the addictive nature and harm associated with vaping.

Question 8a: Do you support the proposal that fines and penalties should mirror those already in place for tobacco products?

The views of respondents are mixed.

Around half of all respondents support the proposal that fines and penalties should mirror those already in place for tobacco products (51.1%). The level of support among organisation respondents is higher than among individual respondents (81.1% and 49.6% respectively). The main point raised by respondents in support of the proposal is that it would protect people, particularly non-smokers, never smokers, children and young people from the negative health harms of vaping products. A consistent approach to that for tobacco products is also welcomed by these respondents. It is said that this would ensure greater clarity of messaging and more effective and efficient enforcement by Trading Standards. There is also feedback among this group of respondents that further discussion with stakeholders is required to ensure a proportionate approach given there is evidence that vaping is less harmful than tobacco products.

Less than half of all respondents disagree with the proposal (44.5%). Individuals are more likely than organisations to disagree with the proposal (46.1% and 13.5% respectively). The main points raised by those responding in this way are that the proposal does not consider existing research that shows vaping and tobacco products are different products and have different levels of health risks and harms, and that the proposal may also limit the benefits of vaping products as a cessation aid. A more proportionate approach is supported by these respondents.

Question 8b: Do you support the proposal that defences should be as laid out as outlined in the Consultation Document?

The views of respondents are mixed.

Around half of all respondents support the proposal that defences should be as laid out as outlined in the Consultation Document (49.5%). The level of support among organisation respondents is higher than among individual respondents (71.4% and 48.5% respectively). The main points raised by those respondents in support of the proposal are that the proposal is reasonable and appropriate, and that it would help ensure a consistent approach with tobacco.

Some 39.8% of all respondents disagree with the proposal. Individuals are more likely than organisations to disagree with the proposal (41.0% and 14.3% respectively). Many of the comments received from these respondents did not relate to the question.

Where relevant points are made, some respondents felt that there is a potential loophole in mirroring the defences in the 2002 Act as their view is that there is too much of a focus on the defences not being the intention to commit an offence. Some local government respondents suggested it would be appropriate to include “a defence of exercising all reasonable precautions and due diligence” rather than simply mirroring the defences of the 2002 Act.

Question 8c: Do you support the proposal that officers of local authorities should be responsible for enforcement?

The views of respondents are mixed but with more in favour of the proposal.

Around half of all respondents support the proposal that officers of local authorities should be responsible for enforcement (49.7%). The level of support among organisation respondents, including but not limited to local government respondents, is higher than among individual respondents (94.3% and 47.5% respectively). Respondents in support of the proposal note that trading standard officers within local authorities are best placed to help enforce the proposals. Respondents also considered it logical to align enforcement with trading standards who already deal with UK-wide vaping regulations and tobacco enforcement and other areas (e.g. alcohol).

Over one-third of all respondents do not support the proposal (37.2%). Individuals are more likely than organisations to disagree with the proposal (38.9% and 2.9% respectively).

Both respondents who support and who do not support the proposal expressed concern about the capacity and resource constraints within local authorities, and a need for continued and additional funding to support implementation of the proposal.

Questions 9a and 9b: Please indicate the impact the proposed policy would have on individuals, and on those living with socio-economic disadvantage.

A higher proportion of all respondents report that the proposed policy would have a negative impact on individuals (50.5% compared to 36.9% responding that it would have a positive impact) and on those living with socio-economic disadvantage (48.6% compared to 25.5% responding that it would have a positive impact).

There is wide support across consultation responses (e.g. in particular from organisations) for a balanced approach to ensure that certain population sub-groups are not disadvantaged by the proposed policy. In terms of the impact on individuals, much of the feedback from respondents does not relate to the protected characteristics outlined in the Consultation Paper, except for suggesting a positive impact in relation to age (i.e. children and young people aged under 18 years). To a much lesser extent, impact in pregnancy is also mentioned. Many of the other comments echo those made across earlier consultation questions. Additional themes to emerge include:

- Inequalities. For example, health organisations feel that proposals would reduce health inequalities in the long-term. The vaping sector and tobacco industry feel that the policy changes may lead to an increase in the number of preventable deaths and worsen existing health inequalities.
- Environmental impact. For example, some individual respondents and health organisations mention reduced plastic waste and reduced exposure to second-hand vape aerosol.

It was noted that the Scottish Government should undertake an impact review to ensure people living with socio-economic disadvantage are not disproportionately affected by the proposed policy.

2 Introduction

2.1 Introduction

This report presents the independent analysis of responses to the Scottish Government Vaping products - tightening rules on advertising and promotion consultation². The consultation ran from 3 February 2022 to 29 April 2022 on the Scottish Government Citizen Space website.

2.2 Context

While current evidence indicates that vaping products are less harmful than smoking tobacco, the Scottish Government cannot say with total certainty that they do not have any long-term harms to health. Clinical studies that demonstrate any long-term impacts from using vapes may take decades. For that reason, until the evidence base is further developed, the Scottish Government considers that these products should currently only be used as a means to stop smoking tobacco – the long-term health impacts of which are well documented.

Raising Scotland's Tobacco-free Generation: Our Tobacco-Control Action Plan (2018)³ contained a commitment to consult on the detail of restricting advertising and promotion of e-cigarettes in Scotland.

Restricting the advertising and promotion of these products, and reducing their visibility, is one way to ensure young people and adult non-smokers are protected from the uptake of these products whilst the long-term health implications remain uncertain.

The Scottish Schools Adolescent Lifestyle and Substance Use Survey (SALSUS) 2018⁴ showed that vape use by young people has increased since 2015. The percentage of 13-year-old non-smokers who have tried vapes had increased from 13% to 15% and for 15-year-olds who are non-smokers it rose from 24% to 28%.

This consultation seeks views on a number of restrictions on the advertising and promotion of vaping products which are aimed at reducing the visibility of them to children, young people and adult non-smokers. The Scottish Government propose to restrict:

- Advertising these products on billboards, advertising hoardings, buses and other vehicles, through distributing leaflets and flyers, and placing adverts on moving video apparatus.
- Distributing free or cut-price samples.
- Sponsoring an activity, event or person.

² The Scottish Government, [Vaping products - tightening rules on advertising and promotion: consultation 2022](#)

³ [Raising Scotland's Tobacco-free Generation: Our Tobacco-Control Action Plan](#) (2018).

⁴ [The Scottish Schools Adolescent Lifestyle and Substance Use Survey](#) (SALSUS) 2018.

Nicotine is highly addictive and is present in most vape liquids to mimic the effects from smoking traditional cigarettes. This means that non-smokers who vape could also become addicted to these devices. The proposals also cover non-nicotine containing vaping liquids given the presence of potentially harmful toxins and chemicals in all vaping liquids, as set out in the Consultation Paper.

At the same time as reducing the visibility of these products the Scottish Government aim to ensure that adults wishing to vape as a way to quit tobacco smoking can easily access advice about the benefits of vaping products as a cessation aid.

2.3 This Public Consultation

The consultation has sought views on proposed regulations which aim to strike a balance between protecting non-smokers and making information available to smokers. The responses and consultation analysis will help the Scottish Government to finalise the scope of these regulations.

3 Consultation Methodology

3.1 Consultation Respondents

The consultation ran from 3 February 2022 to 29 April 2022 on the Scottish Government Citizen Space website.

A total of **768 responses** were received to the consultation. This included:

- Five respondents who between them submitted a total of 12 duplicate submissions (i.e. each respondent submitted two or three responses). We kept the most recent response from each individual and removed all others. Five responses were kept and seven removed.
- Four respondents who included inappropriate language throughout their consultation submission. These were removed as invalid.

A total of 11 responses were removed as invalid.

The following analysis has been based on **757 validated responses, Table 1**. The vast majority are from individuals.

Table 1: Respondents

	Number	%
Individuals	714	94.3%
Organisations	43	5.7%

N=757.

Organisation respondents can be grouped under the following broad categories, **Table 2**. Membership/professional bodies and public sector organisations make up over two-thirds (67.4%) of all organisation submissions.

Table 2: Organisation respondents

	Number	%
Membership body	15	34.9%
Public sector	14	32.5%
Private sector	9	21.0%
Third sector	5	11.6%

N=43. EKOS coding in discussion with Scottish Government.

Health improvement is the main area of focus for almost half of organisation submissions (46.6%), **Table 3**.

Table 3: Organisation respondents

	Number	%
Health	20	46.6%
Other	8	18.6%
Vaping sector	7	16.2%
Local government	4	9.3%
Tobacco industry	4	9.3%

N=43. EKOS coding in discussion with Scottish Government.

Appendix B provides more detail.

3.2 Declaration of Direct or Indirect Links to the Tobacco Industry

The Scottish Government is a Party to the World Health Organisation’s (WHO) Framework Convention on Tobacco Control (FCTC)⁵ and has a duty to protect the development of public health policy from the vested interests of the tobacco industry.

All respondents to the consultation were asked whether they have any direct or indirect links to, or receive funding from, the tobacco industry. Key points to note from **Table 4** include:

- Most respondents reported no links to the tobacco industry (96.0%).
- Respondents that reported direct links to the tobacco industry are mainly tobacco and/or vape manufacturers, or those who work in retail that sell vape products.
- Respondents that reported indirect links to the tobacco industry include, for example, those who work in retail that sell vape products, and organisations who receive support from a range of industries, including the tobacco industry.

Table 4: Links to the tobacco industry

	Number	%
No links	727	96.0%
Direct links	15	2.0%
Indirect links	9	1.2%
Don’t know	6	0.8%

N=757. EKOS changed three “direct links” or “indirect links” to “no links”. This was typically where the respondent note that they vape as an explanation for their original response (all were individuals).

⁵ [The WHO Framework Convention on Tobacco Control](#).

3.3 Analysis

Most of the valid consultation responses were submitted through the Citizen Space website (97.0%). The remainder were submitted to the Scottish Government directly, for example, by email (3.0%). Where this was the case, the Scottish Government added these submissions manually.

All responses were moderated and reviewed separately by the Scottish Government Tobacco Control Team.

EKOS exported consultation responses from Citizen Space into Microsoft Excel for data cleaning, review, and analysis. The analysis seeks to identify the most common themes and issues. It does not report on every single point raised by respondents. Equal weighting has been given to all responses. This includes the range of views, from large organisations that operate on a national, UK, or international level, to individual's viewpoints.

There are both points of agreement and disagreement between those respondents who support and those who do not support the Scottish Government proposals.

This analysis report quotes and paraphrases some of the comments received. However, this does not indicate that these comments will be acted upon or given greater weight than others.

Where the respondent has given permission for their submission to be published these will be made available on the Citizen Space website (**Appendix C**).

3.4 Limitations

The following limitations to the public consultation should be noted:

- Respondents to any public consultation or survey are self-selecting, and the responses may not be representative of the population as a whole. Some respondent views are not impartial.
- The depth of responses to consultation questions is varied – some respondents provide full and detailed responses, while others provide short or single sentence responses. Some, but not all, respondents provide links to published evidence or research in support of points raised.
- Not every respondent provides a response to each question (e.g. not all answer the closed questions). Further, some submissions (e.g. non-Citizen Space responses) provide responses that have not been set out in line with the consultation questions.
- A campaign response was not considered to be a significant issue. It more likely reflects membership bodies (and others) pushing the public consultation out to their members and/or wider networks. Further, some organisations worked with others to prepare a joint response in addition to submitting a response from their own organisation.

- There was a technical problem with the Citizen Space website. It was not possible for respondents to submit an open-ended response (i.e. free text) to Question 2 (Do you agree with proposal to extend restrictions on advertising these products in the ways described above?) or Question 3 (Do you agree with proposal that in-store promotional displays should be banned?). While it was possible for all respondents to answer the closed questions, the qualitative analysis presented in this report for these two questions is limited to non-Citizen-Space submissions. Despite this limitation many of the points made are echoed in later sections so this is not felt to be a significant limitation of the consultation.
- A few consultation questions may have been misinterpreted by respondents:
 - Question 5b - Should offering vapes at very reduced prices be an offence? It should be noted that there may have been some confusion with this question. The question is designed to ask views on the practice of cutting prices (e.g. say from £50 to £15) on kit to encourage people to try the products and buy them. Some respondents may have interpreted this question, for example, to concern offering end of stock items at lower prices.
 - Question 7 - Do you support the proposal to introduce exemptions to allow advertising at trade-only events? Several respondents who did not support this proposal (i.e. answered “No” to the closed question) provide comments in support of the proposal. This may reflect the fact that the pro-vaping response in all previous questions was “No” and some respondents may have answered “No” to Question 7 in line with their previous responses. Support for this proposal may therefore be higher.
 - Question 8b - Do you support the proposal that defences should be as outlined in the Consultation Document? In terms of the qualitative feedback, most respondents repeated or referred to their responses to previous questions. The comments mostly relate to their general views on tightening advertising restrictions rather than the defences to the offences.

3.5 Polarising Views

The consultation demonstrated polarised views.

Individual responses to closed questions are typically split 50:50 (i.e. roughly the same proportion of individuals support the proposals as those individuals who do not support the proposals).

In terms of organisation respondents, those who support the proposals are in the main local government and health organisations. Those organisations who are less likely to support the proposals are the vaping sector, tobacco industry, and other related organisations (e.g. those that sell tobacco and vaping related products).

Respondent views may reflect their knowledge of, or interpretation of, the existing evidence base. Those respondents who are concerned about potential short and longer term adverse consequences of vaping being in favour of the proposal and those who believe that these products offer greater benefits than harms being against the proposal.

Please refer to **Appendix A** for the breakdown of responses to the closed questions.

4 Additional Restrictions on Advertising/Promotion

4.1 Question 1 – Limiting the use of these products

The Scottish Government proposes that vaping products should be positioned purely as a smoking cessation aid to help those currently smoking tobacco products move to a less harmful alternative and gradually quit completely.

Do you agree that we should be seeking to limit use of these products to that as a cessation aid and restrict exposure to them by non-smokers?

Table A1 (Appendix A) provides the quantitative response to **Question 1**.

The views of respondents are mixed:

- **50.7% of all respondents agree** that the Scottish Government should seek to limit use of vaping products as a cessation aid and restrict exposure to non-smokers. The level of support among organisation respondents is higher than among individual respondents (73.2% and 49.4% respectively). This includes local government and health organisations.
- **47.6% of all respondents disagree** with the proposal. Individuals are more likely than organisations to disagree (49.1% and 22.0% respectively). Among organisation respondents this includes the vaping sector and other organisations.

The percentages reported above for respondents who agree or disagree with the proposal do not total 100%. This is because the remainder of respondents answered, “Don’t know”⁶. This is the same approach used throughout the rest of the main document.

4.1.1 Respondents who agree with the proposal

Almost one-quarter of all respondents who agree with the proposal to limit use of vaping products to that as a cessation aid and restrict exposure to non-smokers provide further explanation. The main themes expressed are outlined below.

Theme 1: Smoking cessation

There are many comments from respondents (e.g. individuals, health organisations, and local government) that express further support for tightening the advertising and promotion of vaping products, and for these to be restricted as set out in the Consultation Paper.

These respondents feel this to be a “timely”, “sensible” and “reasonable” approach to promote and limit the use of vaping products to that as a cessation aid for smokers. Common feedback from these respondents is that vaping products are “not for long term use” and “not for non-smokers”.

⁶ Any blank or not answered responses to closed questions were not included in the calculations.

The effectiveness of vaping products as a “tool” to stop smoking (for some people); for their “medicinal purpose as a smoking aid”; and/or as a “harm reduction intervention” are all common phrases used by these same respondents. This includes individual respondents with personal experience of using vaping products and those who point to an existing evidence base.

“A valuable tool in helping me stop smoking but am aware that beyond my personal, positive experience of them, vape tools are at risk of, if not already, being made attractive to non-smoking younger people”.

Individual

“...it should be made explicit on vaping products packaging that these are products for people to use as an aid to stop smoking and should not be used by people who do not smoke tobacco”.

NHS Lanarkshire Tobacco Control Management team

Some health organisation respondents note that people who smoke should be given sufficient information about all cessation aids, to make an informed choice as to what product, if any, is most suitable for their circumstances. These organisations include NHS Lanarkshire Tobacco Control Management team, National Smoking Cessation Co-ordinators Group, NHS Orkney Public Health, and NHS Fife.

“Stop Smoking Service provision uses evidenced based pharmacological products, such as Nicotine Replacement Treatments, Varenicline or Bupropion, alongside specialist behavioural support should always be advised as preferential in the first instance and smokers provided with sufficient information to make an informed choice as to which is most suitable for their circumstances”.

NHS Fife

Some health organisations note that wider issues may need to be considered in promoting the use of nicotine vaping products (NVPs) as a part of the NHS smoking cessation offer. In its response, NHS Fife report that “messaging would need to be simple and understandable” for particular groups. Further, both NHS Fife and NHS Orkney Public Health raise a point about the potential for future legal action.

“Currently NHS cessation services do not supply NVPs. Given the lack of evidence of the long-term impacts of vapour inhalation consideration should be made to potential future litigation in the event of unforeseen negative health impact of NVPs”.

NHS Orkney Public Health

Theme 2: Effective and not restrictive regulation

There is broad support from those responding positively (e.g. local government, health organisations, and some vaping sector respondents) in support of the proposal for effective, rather than restrictive, regulation. These respondents feel that regulation should not only ensure that “e-cigarettes are available and promoted to people who smoke as one tool to help them quit, but ensure e-cigarette marketing and promotion does not target people who have never smoked and young people”.

These respondents also suggest that a “balanced regulatory framework” could allow for targeted marketing channels for adult smokers while limiting mass media channels that may appeal to those who are underage.

A concern raised by respondents (expressed by National Smoking Cessation Co-ordinators Group, NHS Orkney Public Health, and a vaping organisation) is that if legislation is “too restrictive”, advertising may not reach smokers who may want to use e-cigarettes.

Where mentioned, individual and organisation respondents both feel that it is important that current adult smokers, who may choose to use e-cigarettes for a cessation attempt, should be able to receive targeted information and communication about vaping products.

Theme 3: Health harms

Many individual and organisation respondents feel that while they understood that adults have the right to choose to smoke if they wish to do so, restricting exposure of vaping products to non-smokers is considered important given the long-term health impacts of vaping products are not yet fully known.

A “cautious approach to the use of vaping products” is welcomed by health organisations in support of the proposal – “there is still a lot we do not know about vaping products”. Respondents asked for further research on the use and effectiveness of vaping products, including in comparison to other smoking cessation products. Continued education, communication and awareness raising on the “potential dangers of the long-term use of e-cigarettes” is considered important by these respondents. These respondents feel that restricting exposure of vaping products could “help reduce the numbers of non-smokers using these products unnecessarily”.

Some organisation respondents (e.g. Academy of Medical Royal Colleges and Faculties in Scotland, Royal College of Physicians of Edinburgh, University of Glasgow MRC/CSO Social and Public Health Sciences Unit) point to existing research, including Electronic cigarettes and health outcomes: systematic review of global evidence (April 2022)⁷.

The Royal College of Physicians of Edinburgh also note that “advertising, promotion and sponsorship of nicotine e-cigarettes is already banned in 22 countries. Partial regulations have been adopted by 53 countries. Specific regulations vary from country to country, with approaches including minimising misleading advertising, banning distinctive branding elements on packaging, focusing on regulating aspects that appeal to young people such as flavours and the use of cartoon images on packaging.

Some vaping sector respondents in favour of restrictions also note that a balanced approach must be taken to address “existing misperceptions”.

Theme 4: Appeal of vaping products

Many respondents (e.g. individuals, health organisations, local government) feel that the current advertising and packaging of vaping products may encourage non-smokers to try them. Individuals and organisation respondents note the use of “bright colours” and a range of “fruity flavours”, and current use of displays that are “slick, colourful, eye-catching”. They also feel that some vape products can appear similar to highlighter pens that can be easily concealed. Concern is expressed among these respondents that such methods have greater appeal and may be more attractive to certain groups. School age children and young people are frequently mentioned in the consultation responses.

“... recent work on single use vapes by Trading Standards in Scotland has shown that significant numbers of school children are using them. Complaints have been received from parents of children as young as 13”.

Society of Chief Officers of Trading Standards in Scotland (SCOTSS)

⁷ National Centre for Epidemiology and Population Health, The Australian National University: Report for the Australian Department of Health, [Electronic cigarettes and health outcomes: systematic review of global evidence](#) (April 2022).

While the University of Glasgow MRC/CSO Social and Public Health Sciences Unit note in its response that:

“We are cautious about suggesting that use of e-cigarettes causes a greater likelihood of smoking. It may simply be that the same young people who are inclined to use e-cigarettes, are also inclined to use cigarettes and would have ended up using cigarettes anyway regardless of vaping....Nevertheless, the strong association between e-cigarette use and smoking is present among UK youth, and if any portion of this association represent a causal effect on uptake of smoking, then it is concerning that youth from disadvantaged backgrounds who have never smoked are more likely to vape”.

Theme 5: A need for restrictions around display and supply

Respondents (e.g. health organisations, local government, some individuals) feel that more restrictions on display and supply are needed if the Scottish Government is serious about viewing vaping products as a safer alternative to smoking rather than a lifestyle choice. These respondents feel that the current “inappropriate” advertising of vaping products and the prominent in-store display of these products (e.g. shop windows, at the end of aisles, beside tobacco counters) act as a strong “hook” for some people to try vaping products. These respondents also note that this has the “potential for non-smokers who vape to become addicted to nicotine in this format”. As such, these respondents suggest that “access to these products needs to be controlled carefully”, and that vaping products should not be viewed as “fashionable”, “more socially acceptable” or a “lifestyle choice” for children and young people.

“Vaping is more socially acceptable, has less associated stigma and less restricted compared to tobacco smoking. Consequently, non-smokers / members of the public, including young people, are more likely to be exposed to NVPs in everyday life than tobacco. This can function to subliminally normalise this behaviour making it appear more socially acceptable and encourage initiation (and continuation) of vaping products amongst non-smokers”.

NHS Orkney Public Health

4.1.2 Respondents who disagree with the proposal

Almost half of all respondents who disagree with the proposal to limit use of vaping products purely as a cessation aid and restrict exposure to non-smokers provide further explanation.

While not supportive of the Scottish Government proposal, there is consensus among these respondents, including the vaping sector, tobacco industry and other organisations, that vaping products should not be sold to children and young people, and that advertising and promotional activities should not be aimed at this target group.

The main themes emerging are as follows.

Theme 1: Sufficient information to make an informed choice

Respondents (e.g. some individuals, vaping sector and tobacco industry) feel that further restrictions on the advertising of vaping products may result in current adult smokers not being made aware of this product as a means of helping them to give up smoking.

For some of these respondents the proposal is considered “counter-productive” as vaping products are an effective tool to stop smoking. This view is held by individual respondents who use/have used vaping products, and those who feel an improvement in their physical and/or mental health because of their use.

The vaping sector note that it is important that adult smokers have access to all the options available to them and have the freedom to choose the method which best fits their lifestyle and satisfies their needs. These respondents note that there are many different e-cigarette products available on the market, and adult smokers should be able to explore these options.

A widely held view among individual respondents is that adults should have the freedom of choice to purchase e-cigarettes. Some respondents, mainly individuals, feel that vaping products are not just a cessation aid but “an alternative to smoking” or “lifestyle choice” from which they get “pleasure” or “enjoyment”. They are said to be a “consumer product”.

Further, some of these respondents note that it would be “extremely difficult to restrict e-cigarette advertising exposure to non-smokers”, and that “non-smokers should be made aware of the risk reduction in use of vaping products [as] they are the ones that will push family and friends to make a positive choice for their health”.

Theme 2: A need to promote the benefits of vaping over smoking

A common view among those responding negatively to the proposals (e.g. some individuals, vaping sector, tobacco industry) is that adults need to be reassured that e-cigarettes are much safer and less addictive than smoking and that wide promotion of e-cigarettes may help with the “general downward trend of smoking rates”. This is evidenced from published papers including a Public Health England (PHE) review - E-cigarettes: an evidence update (August 2015)⁸. These respondents report that vaping is a “healthier” and/or “safer” option to cigarettes.

Further, the tobacco industry note that the proposals could “disproportionately limit the opportunities for...adult smokers to understand the relative risk differentiation between combustible tobacco products and e-cigarettes”. The tobacco industry also note that “e-cigarettes are not purely a tool for cessation” - the point made is that some smokers could opt to use e-cigarettes alongside conventional tobacco which they feel would still reduce their overall risk levels.

Some individual respondents hold a view that existing research has not yet fully proven the long-term harm/dangers that may be caused by vaping. Another point raised by these respondents is that they believe that “most non-smokers won't vape anyway” or that “there is no evidence that non-smokers are taking up vaping in any great number and there is no justification for limiting advertising”.

Further, the vaping sector and tobacco industry also consider it important that “the wealth of evidence supporting the efficacy of vaping products in smoking cessation” should inform regulatory reviews of the e-cigarette industry. For example, these respondents point to wider evidence published by NHS Health Scotland, ASH Scotland, and the Royal College of Physicians.

⁸ McNeill A, Brose LS, Calder R, Hitchman SC Institute of Psychiatry, Psychology & Neuroscience, National Addiction Centre, King's College London UK Centre for Tobacco & Alcohol Studies Hajek P, McRobbie H (Chapters 9 and 10) Wolfson Institute of Preventive Medicine, Barts and The London School of Medicine and Dentistry Queen Mary, University of London UK Centre for Tobacco & Alcohol Studies, [E-cigarettes: an evidence update A report commissioned by Public Health England](#) (August 2015).

Advertising widely is considered important by these respondents (e.g. some individuals, vaping sector and tobacco industry) in three main areas:

- To raise awareness of the various options available for those who want to stop smoking traditional cigarettes.
- To help those who have stopped smoking to stay off cigarettes.
- For those who might be thinking of starting smoking.

Respondents (individuals, vaping sector, and tobacco industry) feel that having sufficient information to make an informed choice is crucial.

Theme 3: Effects on smoking rates

The vaping sector note that an unintended consequence of restricting vape products to use as a cessation aid could be an increase in smoking rates. The point made by these respondents is that if someone is determined to try nicotine, it would be preferable for them to try the least harmful methods, which means maintaining the availability of vape devices until smoking has been eliminated. The vaping sector note that the proposals could have the unintended consequence of limiting the full potential of e-cigarettes and vape devices as an effective means to stop smoking.

Further, these same respondents feel that the additional restrictions proposed, alongside further measures which could result in e-cigarettes existing purely in a clinical environment (e.g. allowing vapes only to be available on prescription, with the associated requirements of obtaining medical licenses), would limit the agility of the industry, and prevent further product development to the detriment of smokers looking to quit.

Many respondents who disagree with the proposal (e.g. some individuals, vaping sector, tobacco industry) feel that restricting advertising of vaping products may simply discourage people from using such products and encourage smokers to continue to smoke.

Theme 4: Insufficient evidence base

The vaping sector and tobacco industry point to existing controls on vaping products and note that they have already been effective in preventing under-18s and never-smokers from accessing vape products. These respondents feel that the proposed measures are not proportionate, “given the very low levels of e-cigarette use among never-smokers and under-18s” and point to various reports in support of this. They also consider there to be insufficient evidence that vaping acts as a gateway to smoking.

Theme 5: Effective regulation

Both the vaping sector and tobacco industry note that there are areas that can, and must, be addressed through (effective and proportionate) regulation to limit the youth appeal of all e-cigarettes. In addition, through regulation and enforcement, it is suggested by some of these respondents that the Scottish Government should ensure that all e-cigarettes (including non-nicotine containing and disposable vapes) which meet high safety, quality and packaging standards can be placed on the market.

Theme 6: Will make vaping more forbidden and exciting to some people

Some individual respondents feel that further restrictions could make vaping “more taboo” and could encourage those under-18 to experiment with these products.

“Placing restrictions on vaping will place it in the same category as smoking, which will make it much more appealing to young people, much in the same way placing restrictions on smoking make young people feel like they are doing something illicit and dangerous and therefore exciting”.

Individual

4.2 Question 2 – Extend advertising restrictions

The Scottish Government has adopted a precautionary approach to the use of vaping products due to the limited evidence on the long-term health impact of vaping. All the evidence around the use of and impact from these products is kept under constant review. Should the current health fears around prolonged use of vaping products not materialise, the Scottish Government propose to review, and potentially lift, any introduced restrictions around their advertising and promotion. While available evidence shows these products are less harmful than smoking in the short-term, the harmful toxins and chemicals contained within give reasonable cause for concern over the impact of long-term usage. The Scottish Government propose that they should not be advertised on billboards and advertising hoardings, on buses and vehicles, on leaflets and flyers and on moving video advertising apparatus.

Do you agree with the proposal to extend restrictions on advertising these products in the ways described above?

Table A2 (Appendix A) provides the quantitative response to Question 2.

The views of respondents are mixed:

- **48.5% of all respondents agree** with the Scottish Government proposal to extend restrictions on advertising vaping products. The level of support among organisation respondents is higher than among individual respondents (58.1% and 47.9% respectively). Among organisation respondents this includes local government and health organisations.
- **A similar proportion of respondents disagree with the proposal (48.2%)**. Individuals are more likely than organisations to disagree (49.0% and 34.9% respectively). Among organisation respondents this includes the tobacco industry, vaping sector, and other organisations.

There was a technical problem with the Citizen Space website, and those who submitted a response via Citizen Space were not able to provide a response to the open-ended question at **Question 2**. The qualitative analysis is limited to non-Citizen-Space submissions.

4.2.1 Respondents who agree with the proposal

There are limited comments from those who agree with the Scottish Government proposal that vaping products should not be advertised on billboards and advertising hoardings, on buses and vehicles, on leaflets and flyers and on moving video advertising apparatus (13 comments). All except two comments are from health organisations.

The main themes are outlined below.

Theme 1: A positive impact on children and young people

A common theme from health organisations is that restricting advertising in this way could help reduce “visibility” of vaping products among certain population groups. Children, young people, and non-smokers are all mentioned in the consultation responses.

Many health organisation respondents point to existing research and other resources to help explain their support for the proposal. The Scottish Schools Adolescent Lifestyle and Substance Use Survey (SALSUS) 2015⁹ and 2018¹⁰ reports are often referenced. These respondents note that this research shows that “the proportion of young people who have never smoked and who have used e-cigarettes has increased over time”. These respondents also feel that “advertising to non-smokers aims to increase uptake of e-cigarettes in this population group”.

The popularity of vaping in young people is also raised as a concern by Royal College of Paediatrics and Child Health Scotland (RCPCH Scotland) members, who state that “young people may be more inclined to experiment with new products, especially those which are flavoured and coloured to be appealing. Young people may also be less aware of the potential harm due to little public awareness campaigns regarding vaporising”. RCPCH Scotland also refer to the ASH Scotland ‘Talking to teens about smoking’ resource¹¹ which states that “teenagers’ brains are still developing, and they get addicted to the nicotine in cigarettes much faster than adults do. They find nicotine more rewarding, underestimate the risks of smoking, and are more influenced by smoking behaviour around them.” RCPCH Scotland feel that nicotine containing products, particularly inhalational products should be highly restricted and should face the same restrictions as tobacco containing products – “there should be no advertising, no sponsorship and plain packaging”.

Some health organisation respondents note a range of issues from a Cancer Research UK commissioned research report - E-cigarette marketing in the UK: evidence from adult and youth surveys and policy compliance studies (March 2021)¹² - including that young people generally notice e-cigarette marketing more than adults across almost all channels, and young people who have never smoked or vaped notice e-cigarette marketing more than adults who smoke across almost all channels.

Some health organisation respondents highlight that they believe that the tobacco industry has a history of exploiting regulatory loopholes, subverting public policy and legislation in their concerns (e.g. industry has adopted the public health concept of ‘harm reduction’ in messaging) – and was evidenced in a research paper¹³.

⁹ [The Scottish Schools Adolescent Lifestyle and Substance Use Survey \(SALSUS\): Smoking Report](#) (2015).

¹⁰ [The Scottish Schools Adolescent Lifestyle and Substance Use Survey](#) (SALSUS) 2018.

¹¹ ASH Scotland, [Talking to teens about smoking, a guide for parents and carers](#).

¹² Stead, M., Hitchman, S.C., Angus, K., Aleyan, S., Ford, A., MacKintosh, A.M., Purves, R., Mitchell, D., Hammond, D., Fong, G.T., Driezen, P., Reid, J., Craig, L., Chung-Hall J., Cummings, K.M., Thrasher, J.F., Cho Y.J., Cowell, C., Coker, T., Bullock, S., Froguel, A., Vohra, J., [E-cigarette marketing in the UK: evidence from adult and youth surveys and policy compliance studies](#). Cancer Research UK. 2021.

¹³ Peeters S, Gilmore AB. Understanding the emergence of the tobacco industry's use of the term tobacco harm reduction in order to inform public health policy. *Tob Control*. 2015 Mar;24(2):182-9. doi: 10.1136/tobaccocontrol-2013-051502.

Theme 2: Further restrictions will provide additional safeguards

Another common view from health organisation respondents is that the proposed restrictions on advertising vaping products could provide additional safeguards. These respondents feel this could help ensure that advertising does not directly or indirectly target or appeal to children, young people, and adult non-smokers. Feedback from these respondents is that current advertising arrangements for vaping products could:

- Increase visibility of such products.
- Build brand and image recognition and familiarity.
- Increase consumption of vaping products through normalising products.
- Be very stylish and include selective quotes from experts such as CRUK and PHE – it is felt that this “can be misleading and gives the impression of endorsement”.

Theme 3: Reducing health harms

Another common theme from respondents (e.g. health organisations) is that further restrictions on advertising, in line with tobacco products, could discourage the use of nicotine in any form. These respondents consider this to be important given the current “uncertainty relating to long-term health risks and the known addictive qualities of nicotine”. A point reiterated is that promotion should position vaping products purely as a smoking cessation aid to help those currently smoking tobacco products move to a less harmful alternative and gradually quit completely.

“Restrictions should be same as currently in place for tobacco products - essentially to reduce the opportunity to share subliminal messages to increase initiation of vaping in non-smokers, including children and young people. Any advertising permitted should clarify the products are for use only by individuals who are wishing to stop smoking as part of a smoking cessation attempt and...not for long-term use”.

Joint response from the joint response from Scottish Directors of Public Health Group (SDsPH), Public Health Scotland (PHS) and Scottish Health Promotion Managers (SHPM)

4.2.2 Respondents who disagree with the proposal

There are limited comments from those who disagree with the Scottish Government proposal that vaping products should not be advertised on billboards and advertising hoardings, on buses and vehicles, on leaflets and flyers and on moving video advertising apparatus (10 responses in total). The vaping sector and tobacco industry provide most of the qualitative comments, followed by other organisations (e.g. those that sell tobacco and vaping related products).

The main themes are outlined below.

Theme 1: A current strong regulatory regime

A common theme from vaping sector respondents is that The Tobacco and Related Product Regulations (TRPR, 2016) provides the “framework for a responsible vaping industry”. These respondents feel that current regulation prevents adverts which are designed to encourage sales from underage users, and the industry is in firm support of bodies enforcing these regulations. It enables “factual product information to be communicated to existing adult smokers, while ensuring that vape products are not promoted in any way to youth and non-smokers”.

There is reference within the consultation responses from the vaping sector to the following in support of this point: the Advertising Standards Authority (ASA), Committees of Advertising Practice (CAP), Code of Conduct, Preventing Underage Sales Guide, and various examples of industry strict marketing guidelines (e.g. prohibiting wording - flavour names and descriptors, measures to ensure responsible sales practices, working closely with regulators to implement best practice, and supporting legislation preventing the sale of vape products to young people).

Theme 2: Undermine public health

The vaping sector and tobacco industry feel that the advertising and promotion of vaping products is “heavily restricted in Scotland”, and that “there is no evidence that that the remaining limited means of advertising is causing increased uptake by youth or non-smokers in Scotland”.

Regulated and responsible industry advertising is felt by these respondents to be an important “information access point” for existing adult smokers looking to move to a less harmful alternative and gradually quit completely.

The increasing level of vaping product use among young people outlined in the Consultation Paper is disputed by some of these respondents. Further, they note that the number of adult smokers using vaping products in Scotland has remained relatively stable for several years.

There is also reference within vaping sector consultation responses to data on the use of e-cigarettes among never smokers and minors. These respondents note that current regulations have been largely successful in ensuring e-cigarettes are aimed at, and used by, adult smokers. The proposal to ban the limited remaining channels for advertising vaping products in Scotland is said by these respondents to be “unnecessary” and could “undermine public health”.

Theme 3: Appropriate access to information for adult smokers

The vaping sector and tobacco industry feel that advertising, promotional and marketing activities and communications should only be targeted/directed and appeal to adults. There is strong support among these respondents for efforts to prevent both youth access to, and use of, vaping products. For example, a suggestion made by some of these respondents is that guidance should be clear that nicotine products should never be marketed, or sold, in ways that mimic youth-oriented products (e.g. by using branding or packaging that mimics confectionary, or other youth-oriented products), and that this could ensure products are not particularly appealing to youth and never smokers. These respondents also feel that a balance needs to be struck to ensure that e-cigarettes remain sufficiently visible to adult smokers to move away from using tobacco.

Theme 4: Reduced visibility

Vaping sector respondents note that they are already limited in their ability to reach consumers, and the proposals would further reduce the visibility of vaping devices and its ability to “denormalise smoking”. These respondents feel that the proposed approach by the Scottish Government is not “precautionary”. Rather, these respondents feel the measures “incorrectly conflate the relative risk of combustible tobacco and vaping, thus deterring potential quitters from exploring a highly effective method”.

A point made by these respondents is that proposals to prohibit in-store promotional displays, as well as advertisements on billboards and bus stops, “would ultimately result in reduced visibility for the target audience of adult smokers, and do not directly address potential concerns on youth access”. It is further noted that allowing responsible retailers and manufacturers to communicate their products and services and highlight the health/cost benefits of making the move to e-cigarettes in a targeted manner, could help reduce smoking prevalence.

Vaping sector respondents suggest that more analysis is required to examine the most appropriate channels for reaching adult smokers before implementing a widespread ban on the channels proposed in the consultation paper.

It is also suggested by the tobacco industry that the proposals do not fit with current advice from the RCP which states that: “in the interests of public health it is important to promote the use of e-cigarettes, NRT and other non-tobacco nicotine products as widely as possible as a substitute for smoking in the UK”. Further, the RCP states that “if [a risk averse and precautionary] approach also makes e-cigarettes less easily accessible, less palatable or acceptable, more expensive, less consumer friendly or pharmacologically less effective, or inhibits innovation and development of new and improved products, then it causes harm by perpetuating smoking”.

Theme 5: Misinformation regarding the relative risks of vape products

The vaping sector and tobacco industry note that independent expert reports commissioned by PHE have repeatedly raised concerns regarding growing misperceptions of the harm caused by vaping compared with smoking and that this should be addressed.

The tobacco industry notes that further restraining product communications and applying the same regulatory restrictions for combustible tobacco products to e-cigarettes, as proposed in the Consultation Paper, would make the situation worse.

These respondents note that “due to the clear distinction between vape products and combustible tobacco, vape products should be regulated separately from existing tobacco advertising restrictions/bans, with regulated advertising and promotion permitted”. A point raised by the vaping sector is that rather than a proportionate approach, the Scottish Government proposes to increase the regulation of e-cigarettes similar to that applicable to the advertising and promotion of cigarettes, the most harmful means of consuming nicotine. It is suggested that conflating these products will add to the already high levels of misinformation.

These respondents also point to recent evidence that consumer confidence in the reduced harm potential of vape products is decreasing. For example, the ASH report *Use of e-cigarettes (vapes) among adults in Great Britain (2021)*¹⁴ notes that nearly one-third of existing smokers incorrectly believe that vaping is more or equally harmful as smoking.

Taken together, such issues are felt by these respondents to undermine the ability of consumers to make informed choices and discourage moving away from using tobacco. It is felt that restrictions on vaping sends a strong message that there is no benefit to moving from smoking to vaping.

Increasing consumer knowledge and confidence in vaping products is seen by these respondents as crucial in supporting successful smoking quit attempts and achieving Scotland’s Smoke-free ambition. To achieve this, they note that adult smokers must not be discouraged from transitioning by misleading information and media reporting. These respondents feel that advertising should be permitted provided it contains clear and accurate information about vape products and their relative risk compared to smoking and is targeted at adult smokers and vapers only. Regulated advertising of scientifically substantiated information on the reduced risk potential of vape products could improve confidence in the alternatives to smoking.

¹⁴ ASH, [Use of e-cigarettes \(vapes\) among adults in Great Britain](#) (June 2021).

Theme 6: Improved enforcement of existing regulations and industry led regulation

There is wide agreement among respondents (e.g. vaping sector, tobacco industry) that there needs to be “robust measures and processes” in place to prevent nicotine products from being sold to young people. Some of these respondents note that the proposed restrictions are in response to some retailers selling vaping devices to people under the age of 18. Some of these respondents also note that adding further restrictions on advertising and promotion may not make a difference to businesses that break the law but could affect legitimate businesses which help people to stop smoking – “given the core concern is the product and packaging itself, not advertising and promotion”.

Vaping sector and tobacco industry respondents also query whether existing regulations are being sufficiently enforced. The vaping sector and tobacco industry note support for “vigorously enforcing existing age restrictions on all age restricted products” and for “tougher sanctions for those breaking the rules and tightening regulations particularly on placement”. These respondents feel there is scope for improved enforcement of existing regulations and industry led regulation to maintain high industry standards and compliance. They also suggest that Trading Standards officers need greater support in identifying non-compliance in age verification, and that this could combat perceived fears of wider vape use. Respondents note that the Trading Standards and UK Vaping Industry Association (UKVIA) partnership as one example.

The vaping sector also encourage the Scottish Government to work closely with counterparts across the UK “to ensure online and social media spaces are more effectively regulated and rules enforced to protect young people from being exposed to harmful content”.

Theme 7: Impact on convenience stores

The Association of Convenience Stores (ACS) raise various points on the impact of the proposed restrictions on its members:

- Leaflets, Flyers and Advertising Hoarders – these are said to be an important promotional tools that convenience retailers use to promote products and services in their stores, and that restricting use would reduce retailers’ ability to promote their offer and compete with other businesses. The concern raised is that many independent retailers may be disproportionately impacted given that they are more likely to use leaflets and flyers compared to larger retailers. ACS say there is a need for clear definitions of the advertising mechanisms that are proposed to be restricted (e.g. shop window displays are distinct from advertising hoardings).
- Moving Video Apparatus – ACS note that almost one-third of retailers have digital display screens in their stores - some retailers have long standing contracts with suppliers associated with video display units (e.g. contractual agreements to display certain products such as e-cigarettes). They note that the Scottish Government proposal could affect such agreements. Other retailers own and operate their own display screens and generate income from suppliers for advertising products. The main challenge is reported by ACS as being clear about what types of equipment are impacted by the proposals. It suggests that the Scottish Government needs to “clearly set out the definition they will use in regulations and provide guidance on the different technologies this impacts”.

The ACS also emphasise the importance of sufficient lead-in time for any changes to be introduced.

The Scottish Grocers' Federation (SGF) highlights the role of the convenience store sector in achieving the Scottish Government's ambition of a tobacco-free generation in Scotland by 2034. "SGF and its member stores want to help our customers transition away from cigarettes towards vaping products". It also notes that "advertising and promotion have several key functions, which taken together, are vital ways in which vaping products become attractive to current smokers – to reach new users, shape the brand preferences of existing users, and create premium brands. If the public health benefits of vaping are to be realised, then vaping products have to be appealing to adult smokers".

4.2.3 Further clarity on the proposals

Several health organisation respondents are concerned with the presence of vaping products online especially on social media platforms. Further clarity is asked for by these respondents from the Scottish Government on the proposals, as reflected in the quote below.

"We would welcome further clarity on online approaches to advertisement including use of social media, social media influencers, etc. Young people are particularly exposed to these forms of media. Advertisement via social media normalises activities / behaviour which could encourage initiation (and continuation) of vaping products amongst non-smokers. We would welcome further clarity on other online approaches to advertisement including promotions, giveaways".

NHS Orkney Public Health

4.3 Question 3 – In-store promotional displays

The Scottish Government believe that in-store promotional displays should be banned so they are not used as an alternative means to advertise these products.

Do you agree with the proposal that in-store promotional displays should be banned?

Table A3 (Appendix A) provides the quantitative response to Question 3.

Respondent views are mixed, however, more do not support the proposal:

- **Less than half of all respondents agree** with the Scottish Government proposal that in-store promotional displays should be banned so they are not used as an alternative means to advertise these products (44.8%). The level of support among organisation respondents is higher than among individual respondents (61.9% and 43.8% respectively). Among organisation respondents this includes local government and health organisations.
- **Over half of respondents disagree with the proposal (53.8%)**. Individuals are more likely than organisations to disagree (54.8% and 35.7% respectively). Among organisation respondents this includes the tobacco industry, vaping sector, and other organisations (e.g. those that sell tobacco and vaping related products).

As outlined in Section 3, a technical problem with the Citizen Space website meant not all respondents were able to provide a response to the open-ended question at Question 3. The qualitative analysis is limited to non-Citizen-Space submissions.

4.3.1 Respondents who agree with the proposal

There are some comments from those who agree with the Scottish Government proposal that in-store promotional displays should be banned so they are not used as an alternative means to advertise these products (15 responses in total). All comments except three are from health organisation respondents.

The main theme is outlined below.

Theme 1: Reduced visibility and accessibility of vaping products

Health organisation respondents (and others e.g. some individuals, local government) feel that a ban on in-store promotional displays would minimise the “visibility” and “accessibility” of vaping products “with attractive flavours, names and designs”, including those advertised with some “energising property” to children, young people, and adult non-smokers. Support is expressed by these respondents for plain packaging and point of sale bans to “bring parity with tobacco products” – “Point of sale legislation has reduced tobacco brand recognition among children and young people”.

These respondents also suggest that a ban on in-store promotional displays would support a reduction in “subliminal advertising” to young adults and adult non-smokers and may discourage their uptake by non-smokers.

“Disposable vapes are, in the main, prominently displayed on the counter, next to the till, or in the space previously reserved for tobacco gantries. Displays are slick, eye-catching, and attractive to young people. The packets themselves are brightly coloured and attractive. These in-store promotional displays would be better dealt with by a general display ban in the same way cigarettes are organised. The prominent in-store display of vapes exposes young people and non-smokers to these products and portrays them as a cool lifestyle choice”.

Aberdeen City Council

Wider comments

Wider comments, but not raised by many respondents, include the following:

- ASH Scotland would like to see a “unified regulatory framework across all tobacco, recreational nicotine, nicotine and non-nicotine e-cigarette and vaping products, and related accessories”.
- Points raised in the NHS Lanarkshire (South Lanarkshire Focus Group) include: a) whether the proposal would lead to the closure of vaping specialist shops; b) some feel that vaping products should not be promoted in-store at all. Others disagree with this on the basis that it would reduce visibility of the products to adult smokers.
- NHS Greater Glasgow and Clyde note the following point – “...should a nicotine containing vape product be granted a MHRA licence and be able to be identified as a stop smoking medication rather than a lifestyle product, promotion should be in line with other MHRA licenced products as long as the target group for advertising is clear”.

4.3.2 Respondents who disagree with the proposal

There are also some comments from those who disagree with the Scottish Government proposal that in-store promotional displays should be banned so they are not used as an alternative means to advertise these products (10 responses in total). Most of the comments are from the vaping sector and tobacco industry.

Many of the points raised by the vaping sector and tobacco industry echo those reported to earlier consultation questions. As such, these have been briefly summarised below:

- These respondents consider there to be an existing strong existing regulatory framework.
- Further regulation is considered disproportionate by these respondents.
- Respondent concern around implementation and enforcement of the proposals.
- There is support for evidenced based and effective regulation.
- These respondents hold the view that further restrictions could worsen perceived existing high levels of misinformation on the relative harms of vaping and smoking.

Wider points raised

The following points are raised, but not by many respondents:

- The proposal could “severely restrict the ability of vaping products to compete with combustible cigarettes and with other vaping products”, and disproportionately impact smaller manufacturers, small brands and overseas manufacturers.
- The vaping sector note support for the introduction of a “comprehensive test purchasing scheme for all areas of the UK” and that it is in favour of establishing an “Approved Retailer Scheme in partnership with vape trade associations”.
- A vaping sector organisation believes that existing restrictions that limit the set of permissible circumstances but do not ban in-store promotional displays should remain in place.

4.3.3 Further clarity on the proposal

There is a call from organisation respondents for further information, clarity, and guidance from the Scottish Government regarding the proposal to ban in-store promotional displays:

- Further clarity on what is meant by “in-store promotional displays” and how this would apply to a range of store types (e.g. supermarkets, convenience stores and small retailers, vaping shops and specialist retailers, pharmacies).
- How restrictions would apply to a varied range of promotional displays (e.g. point of sale, checkouts and end-of-aisle product displays, free standing display units, stand-out shelving, window displays, promotional stalls in shops/shopping centres).
- Further details are requested on whether there would be any exemptions within specific settings and what guidance would be provided.

5 Brand-sharing in Products and Services

5.1 Question 4 – Brand-sharing

Brand-sharing is the practice where one business's products or services carry the insignia, logos, colours or other identifiable markings of an unrelated product as a way of promoting or marketing goods or services. The Scottish Government proposes to make brand-sharing between NVPs and other marketed commercial goods an offence.

Brand-sharing was included in the advertising ban on tobacco to make sure tobacco companies would not be able to continue to promote their brand or products on non-tobacco products such as children's toys or e-cigarettes which could be used as an alternative to advertising. The Scottish Government wish to mirror this to ensure brand-sharing does not become an alternative means to promote uptake of vaping products. Restricting brand-sharing would, in this instance, prohibit vaping products from either carrying another product's brand on a device or packaging or have the branding of a vaping product on any other products.

Do you support the proposal to make brand-sharing an offence?

Table A4 (Appendix A) provides the quantitative response to Question 4.

The views of respondents are mixed:

- **47.9% of all respondents support the Scottish Government proposal** to make brand-sharing an offence. The level of support among organisation respondents is higher than among individual respondents (73.7% and 46.6% respectively). Among organisation respondents this includes local government, health organisations, and other organisations. Roughly the same proportion of individual respondents agree with the proposal as disagree.
- **A slightly smaller proportion of respondents do not support the proposal (44.6%).** Individuals are more likely than organisations to not support the proposal (46.1% and 15.8% respectively). Among organisation respondents this includes the tobacco industry, followed by but to a lesser extent the vaping sector.

5.1.1 Respondents who support the proposal

Around 15% of respondents who support the proposal to make brand-sharing an offence provide qualitative feedback. Most of the comments are from individual respondents followed by health organisations.

The main themes raised in support of the proposal are summarised below.

Theme 1: A proportionate approach

Respondents, including individuals and health organisations, agree that products meant for adults should not be promoted on non-tobacco products aimed at children and young people. Some respondents note concern over online brand sharing through social media. The proposal is considered by these same respondents to be an "appropriate and proportional approach" to reduce "influencing" children, to avoid "glamorising" vaping to non-smokers, and to avoid making the "product appear safe/less harmful".

“Putting adverts for smoking, drinking, drugs and vaping on children’s toys is wrong. I only add vaping to this list, not because I think vapes are harmful, but that they are an adult product”.

Individual

Theme 2: Bringing advertising in line with that for tobacco

Respondents (e.g. health organisations, local government, individuals) feel the proposals would bring advertising legislation for vaping products in line with/mirror that for tobacco. There is reference within these consultation responses to understanding how pervasive and normalising this type of promotion can be. Feedback from these respondents also highlights “despite this legislation, the tobacco industry has continued to bypass smoke free advertising legislation internationally by utilising pop stars, gaming, YouTube to market to a younger audience”.

Theme 3: Some population groups find this advertising more appealing and attractive

Respondents (e.g. individuals, health organisations) note that some population groups including children and young people may be particularly vulnerable to this kind of marketing. These respondents suggest that the proposal would help to “reduce the visibility of associations between vaping and sports, fashion or music which tend to be particularly noticed by children and young people”.

Promotion to current adult smokers, to help cessation, is considered reasonable by these same respondents, but placement on unrelated items is felt to be unnecessary and may make the activity attractive to others. Individuals and health organisations feel that making brand-sharing an offence could help to prevent the practice from happening at all (e.g. if there were appropriate enforcement, prosecution, and fines).

“Brand-sharing is essentially advertising through the back door, manipulative and subliminal and allows messages to reach a widespread non-smoking audience including children and young people. There is evidence that tobacco brand sharing increases the likelihood of adolescents taking up smoking. We note that there is currently no unbranded NVP”.

Joint response from SDsPH, PHS, and SHPM

5.1.2 Respondents who do not support the proposal

Around one-fifth of all respondents who do not support the proposal to make brand-sharing an offence provide qualitative feedback. The feedback is mainly from individual respondents, followed by the vaping sector and tobacco industry. Many of these respondents restate similar points raised to earlier consultation questions, including some points raised by respondents above in **Section 5.1.1**.

Theme 1: Brand-sharing is not commonplace in the industry

The vaping sector’s view is that “brand-sharing is not commonplace in the industry, and they note the following points:

- There is support among these respondents for enforcement body resources to be targeted at breaches of current regulation, rather than the addition of new guidelines.
- The proposal is felt by these respondents to conflate smoking and vaping and undermines exposure to a significantly less harmful alternative to assist smokers stop smoking.

- The respondents suggest that the measures proposed would mean the regulatory framework for e-cigarettes would start to mirror that of traditional combustible tobacco products and could cause adult smokers to misunderstand the relative harm distinction between the different products.

Further, some individual respondents feel that brand-sharing extends beyond vaping products/ industry, and they should not be singled out.

Theme 2: Role of Trading Standards

Vaping sector respondents feel that “brand-sharing may take place among counterfeit products” – these respondents highlight the “essential need to crack down on the most egregious breaches of current regulation”.

They also suggest that further enforcement is required to ensure that “only safe and responsible e-cigarette products are available for sale, specifically inspection of the packaging and the disposable vaping devices as part of the notifications process”.

These respondents also suggest that Trading Standards in Scotland “must be adequately equipped to enforce current regulations, ahead of introducing further measures which will increase the burden, without tackling the perceived issues raised in the consultation”.

Theme 3: Additional regulations are felt to be disproportionate

The vaping sector and tobacco industry respondents feel that additional regulations are disproportionate. These respondents report that there is already legislation to deal with products which appeal to children and to stop tobacco products brand-sharing with other products such as vaping products.

Further, and as noted above, these respondents suggest resources should be “targeted at breaches of current regulation”, rather than the addition of “new guidelines which do not tackle an issue which is commonplace in industry or society”.

There is, however, some reference to its use for disposable vapes (e.g. individuals, vaping sector), and that this requires more effective regulation.

The vaping sector and tobacco industry feel that the focus should be on increasing education and awareness rather than on introducing more restrictions.

Theme 4: Sponsoring sports teams, shirts, and equipment

A few individual respondents feel that sponsoring sports teams, sports shirts, or sports equipment is not an issue or concern, and should continue to be allowed. These respondents note that this could be “valuable revenue to sports clubs”.

5.1.3 Further clarity on the proposal

Although framed in slightly different ways, NHS Lanarkshire Tobacco Control Management team, National Smoking Cessation Co-ordinators Group and NHS Orkney Public Health request further clarity from the Scottish Government on the proposal. More specifically, clarification “as to whether the legislation will allow for smoking cessation services who may wish to provide e-cigarettes in the future, as there is currently no non-branded product available”. Further, “legislation would need to make clear that the offence is for commercial/business brand-sharing”.

6 Free Distribution and Nominal Pricing

6.1 Question 5a – Free distribution

The proposed legislation would enable the Scottish Government to restrict free distribution and nominal pricing of vape products when undertaken as part of a business. This would mean that the restrictions would not apply to the NHS or charities. Free distribution, as the term suggests, is the process by which goods, or coupons for goods are distributed to individuals free of charge. This is generally done to market and raise awareness of a product within a particular group of people.

Do you support the proposal to make free distribution of vaping products an offence?

Table A5a (Appendix A) provides the quantitative response to Question 5a.

The views of respondents are mixed, however, more do not support the proposal:

- **Overall, 42.7% of all respondents support** the Scottish Government proposal to make free distribution of vaping products an offence. The level of support among organisation respondents is higher than among individual respondents (68.4% and 41.4% respectively). Among organisation respondents this includes local government and health organisations.
- **Over half of all respondents do not support the proposal (53.5%)**. Individuals are more likely than organisations to not support the proposal (55.0% and 26.3% respectively). Among organisation respondents this includes the vaping sector and the tobacco industry.

6.1.1 Respondents who support the proposal

Around one-sixth of all respondents who support the proposal to restrict free distribution of vape products when undertaken as part of a business provide further explanation.

The main themes are summarised below.

Theme 1: Limit free distribution to the NHS

Some respondents (e.g. health organisations and some individuals) feel that any free distribution of products should only happen as part of a smoking cessation programme in the NHS or by charities. These respondents consider it important to restrict free distribution to young people and adult non-smokers for whom taking up vaping would be harmful rather than beneficial.

Several respondents (e.g. health organisations and some individuals) make the point that free distribution of vaping products by some private sector companies are specifically targeted at young people and adult non-smokers to encourage them to take up vaping. There is support among these respondents that free distribution should be limited to the NHS.

“We support the proposal to make free distribution, by commercial organisations linked to the tobacco industry, of vaping products an offence. We are especially supportive of legislation which restricts free distribution to young people and those people who do not smoke. We would have concerns if legislation restricted access to NVPs for those people who wish to use them as a harm reduction method and/or smoking cessation aid”.

NHS Lanarkshire Tobacco Control Management team

Some respondents (e.g. health organisations and individuals) report that the free distribution of vaping products should remain an option as a potential route towards stopping smoking (i.e. excluding NHS and charities).

“I feel there should, however, be a caveat that access to vape products could be accessed freely when used to quit smoking. For example, as part of smoke free kits currently available”.

Individual

Theme 2: Reducing take up by children and young people

Across the consultation questions, including **Question 5a**, there are many personal testimonials from individuals who have witnessed children using vape products. These respondents express concern from seeing children as young as eleven vaping and children purchasing vapes over the counter in shops.

“Children are already going into shops in Glasgow and surrounding areas to buy vapes over the counter. The fact this is happening at all is highly disturbing when Scotland has made brilliant progress in reducing smoking”.

Individual

There is also some concern expressed (e.g. among some individuals and health organisations) that giveaways of NVPs in settings such as nightclubs or as part of competitions could further glamourise vaping products among young people and adult non-smokers, leading to increased initiation of vaping among these population groups.

6.1.2 Respondents who do not support the proposal

Almost one-third of respondents who do not support the proposal to restrict free distribution of vape products when undertaken as part of a business provide further comments on their reasons.

Theme 1: A need to promote the benefits of vaping over smoking

A common view among these respondents (primarily individuals, but also some tobacco industry and vaping sector respondents) is that the free distribution of vape products allows smokers to sample them. Further, these respondents note that this helps to raise awareness of, and encourages take up of, vaping. These respondents also note that vaping is much less harmful than smoking and that measures to help people to move away from tobacco should be further encouraged.

“As a vaper who quit smoking after 30 years, the first I tried vaping was through a free sample. I was a heavy smoker, who could not quit through other nicotine replacement treatments and thought I would never stop”.

Individual

A smaller number of responses, all by individual respondents (with no reported links to industry or vape trade), make a point that rather than banning the free distribution of NVPs, free distribution should be encouraged.

Theme 2: Appropriate regulation

Many respondents (primarily individuals, but also some tobacco industry and vaping sector respondents) feel that free distribution of vape products should be allowed if it is restricted to over 18s. A few of these respondents additionally note, however, that free distribution should not be allowed to non-smokers.

“As long as recipients are 18 or over, there is no reason to ban the distribution of free vapour products. Many vape shops and consumer groups have contributed to smoking cessation by offering smokers free products”.

Individual

The vaping sector and tobacco industry respondents agree that free distribution of NVPs should only be targeted at existing adult smokers but argue that free distribution of vaping products should not be limited to NHS and charities. These respondents suggest that this should also be allowed by specialist vaping retailers which operate a Challenge 25 Policy.

Several individual respondents agree with this stance and make the point that free distribution should only be allowed by approved organisations in the appropriate setting, which is generally seen as a place operated by professionals with appropriate age restrictions and ID policy.

Theme 3: Supporting those on lower incomes

The high initial price of vaping equipment is noted by some respondents (individuals and vaping industry). This is said by these respondents to be a barrier to vaping for people on low incomes, who are disproportionately likely to smoke. Further, these respondents note that the free provision or sampling of vaping equipment could help people on low incomes to overcome the initial financial barrier to starting vaping.

“The people who most need to stop smoking (the poorest and most disadvantaged) are far less likely to risk buying a product they don't understand. In my service, we gave out free vapes to help people get started, after which they were able to self-fund. Without this helping hand, they would have continued to smoke”.

Individual

6.1.3 Further clarity on the proposals

There is some concern among health organisations that a blanket ban on commercial organisations may be inappropriate and that exemptions could be considered. These respondents suggest exemptions including: elderly and mental health residential settings, private businesses supplying their own employees NVPs as part of health and wellbeing initiatives, or research projects which involve e-cigarettes. There is a request for clarification (largely by health organisations) regarding whether the distribution of branded NVPs by the NHS or charities would be prohibited under the proposal.

6.2 Question 5b – Nominal pricing

Nominal pricing involves reducing the cost of a product below its market value, sometimes to the extent that the product is almost cost-free. Again, this tactic is employed as a marketing and awareness raising tool, which could be used to replace advertising.

Restricting free distribution and nominal pricing would stop businesses giving away to the public any product or coupon where the purpose or effect is to promote a vaping product. It would also prevent them from making products or coupons for products available to the public for a nominal sum, where the purpose or effect is to promote a vaping product. Marketing initiatives that distribute free or cut-price vaping products to initiate uptake should be banned. The proposed regulations are required to ensure it is not easy to circumvent advertising regulations by offering free samples or selling at greatly reduced prices.

Do you support the proposal that nominal pricing of vaping products should be an offence?

Table A5b (Appendix A) provides the quantitative response to Question 5b.

There is broad opposition to this proposal among respondents:

- **Over one-third of all respondents support the proposal** that nominal pricing of vaping products should be an offence (36.8%). The level of support among organisation respondents is higher than among individual respondents (63.2% and 35.4% respectively). Among organisation respondents this includes local government and health organisations.
- **Just under two-thirds of all respondents do not support the proposal (60.1%).** Individuals are more likely than organisations to not support the proposal (61.7% and 31.6% respectively). Among organisation respondents this includes the tobacco industry and the vaping sector

6.2.1 Potential confusion about the question

It should, however, be noted that there may have been some confusion with this question. The question is designed to ask views on the practice of cutting prices (e.g. say from £50 to £15) on kit to encourage people to try the products and buy them. Some respondents have interpreted this question, for example, to concern offering end of stock items at lower prices.

6.2.2 Respondents who support the proposal

Almost one-seventh of respondents who support the proposal that nominal pricing of vaping products should be an offence provide further explanation. Many of the comments are similar to those raised in **Question 5a** regarding free distribution of vaping products.

Theme 1: Take up by children and young people

Common feedback from respondents in agreement with the proposal (individuals and health organisations) is that nominal pricing can be used to attract children and young people to start vaping, and that low prices make these products more affordable and attractive to these age groups.

Theme 2: Limit free distribution to NHS

There are a few comments (mainly from health organisations), that nominal pricing should only be allowed on the NHS as part of publicly funded smoking cessation programmes with similar reasons as outlined above in **Question 5a** (see **Section 6.1**).

6.2.3 Respondents who do not support the proposal

Almost one-third of respondents who do not support the proposal that nominal pricing of vaping products should be an offence provide further explanation. Many of these comments are also similar to those regarding free distribution of vaping equipment in **Question 5a** (see **Section 6.1**).

Theme 1: A need to promote the benefits of vaping over smoking

A common theme (primarily from individuals, but also from the vaping sector and tobacco industry) is that vaping should be affordable to encourage people to quit smoking. This is based on the common belief that vaping is an effective tool for smoking cessation and should be encouraged.

A related point from individual respondents is that people on low incomes are generally more likely to smoke and are therefore the most likely to benefit from measures which decrease the costs of vaping, both in terms of having greater access to vaping, but also in reducing the cost of their addiction.

“Price can be a barrier... therefore preventing offers and reduced prices could inadvertently keep people smoking and given the fact that people from the most deprived areas this could increase health inequalities”.

Individual

Theme 2: Potential misinterpretation of consultation question

Another theme that emerges, mainly from individual respondents, is that vape retailers should have flexibility in offering discounts on products to help clear their stock reaching sell by date or stock that has been replaced by another product.

Theme 3: Discounting restricted to adults

As with the free distribution of vaping products a wider point raised (e.g. by individuals and the tobacco industry and vaping sector) is that discounting should only be offered to over 18s with appropriate regulations in place to prevent children and young people being targeted.

7 Sponsorship of an Activity, Event or Person

7.1 Question 6 – Sponsorship agreements

The Scottish Government intends to prohibit entering into an agreement with an individual, group or business for the purpose of promoting a vape product. Vape products should not be associated with clubs, events, activities, individuals or groups. Vaping companies have, as their tobacco counterparts did in the UK previously, already entered sponsorship agreements with premium sporting clubs and activities. The Scottish Government propose that restrictions be introduced to prohibit sponsorship of activities, events or individuals here in Scotland. This restriction would limit the awareness of non-smokers and young people of vape products, to ensure that these are not seen as a lifestyle product.

Do you support the proposal to make sponsorship agreements in respect of vaping products an offence?

Table A6 (Appendix A) provides the quantitative response to **Question 6**.

There are relatively mixed views among respondents:

- **44.9% of all respondents support the proposal** to make sponsorship agreements in respect of vaping products an offence. The level of support among organisation respondents is higher than among individual respondents (73.0% and 43.5%). Among organisation respondents this includes local government and health organisations.
- **48.7% of all respondents do not support the proposal**. Individuals are more likely than organisations to not support the proposal (50.2% and 18.9% respectively). Among organisation respondents this includes the tobacco industry and the vaping sector.

7.1.1 Respondents who support the proposal

Just over one-tenth of respondents who support the proposal to make sponsorship agreements in respect of vaping products an offence provide further explanation.

Theme 1: Uptake by children, young people, and non-smokers

The most common theme to emerge from consultation responses (primarily health organisations and some individuals) is that a ban in sponsorship is necessary to protect children and non-smokers from being exposed to vape product advertising. These respondents express concern that vape products sponsoring sports teams, music events or nightclubs could glamourise vaping and encourage uptake amongst young people and non-smokers.

“There are many examples of music events and sports being sponsored by vaping brands; for example, nzoVape have sponsored music festivals across the UK, such as PierJam on Blackpool North Pier. Whilst some of these events are 18+, not all are, younger people have opportunities to view e-cigarette brands promoted via social media and viral influencing.”

“Sponsorship agreements, such as the partnership highlighted between a business and a Scottish football team, help to legitimise marketing tactics aimed at young people.”

Asthma + Lung UK Scotland

Theme 2: There should be similar restrictions to tobacco

Another common theme among individual respondents who support the proposal is that vaping products should be treated the same as tobacco and therefore sponsorship should be banned. A belief among these respondents is that vaping is as harmful as smoking or that tobacco companies would use it as a loophole to get around the ban on tobacco sponsorship.

7.1.2 Respondents who do not support the proposal

Just over one-fifth of respondents who did not support the proposal to make sponsorship agreements in respect of vaping products an offence provide further explanation.

Theme 1: A need to promote the benefits of vaping

A common theme among these respondents (primarily from individuals, but also from the vaping sector and tobacco industry) is that if sponsorship encourages the take up of vaping amongst adult smokers, then that is a positive thing (e.g. as a route to stop smoking, denormalise tobacco products).

“A smokefree society needs all the help it can get the promotion of said products can only be a good thing in reaching as many smokers as possible”.

Individual

“If a vaping brand is associated with a popular event or another popular non-vaping product, it will encourage smokers to trial that product, much in the same way any type of sponsorship does, and this should be encouraged”.

Individual

Theme 2: Other harmful products

Another common view (e.g. among individual respondents) is that restrictions on sponsorship for vaping do not make sense when sponsorship for other harmful products, such as alcohol, junk food or gambling, are allowed.

Theme 3: Sponsorship for events and products aimed at adults

It is further noted, from individual respondents, the vaping sector and tobacco industry, that sponsorship should only be allowed on events or products that are primarily aimed at over 18s, and that sponsorship of a club, event or activity that is primarily aimed at, or has a particular appeal to under 18s should not be allowed.

Some vaping and tobacco companies feel that a ban on sponsorship agreements would limit awareness of vaping products to current smokers and appropriate safeguards for children can be brought in without a strict ban.

8 Trade-only Event

The Scottish Government proposes that exemptions should be introduced to permit advertising at trade-only events such as trade shows and conferences. The Scottish Government view is that this does not fall under advertising to the general public and would not promote uptake of NVPs.

8.1 Question 7 – Trade-only events

Do you support the proposal to introduce exemptions to allow advertising at trade-only events?

Table A7 (Appendix A) provides the quantitative response to Question 7.

There is broad support for the proposal among respondents:

- **60.2% of all respondents support the proposal** to introduce exemptions to allow advertising at trade-only events. The level of support among organisation respondents is higher than among individual respondents (73.0% and 59.5%). Among organisation respondents this includes health organisations, local government, and the vaping sector.
- **27.9% of all respondents do not support the proposal.** Individuals are more likely than organisations to not support the proposal (29.0% and 8.1% respectively). Among organisation respondents this includes the tobacco industry.

8.1.1 Potential confusion about the question

There appears to be some confusion among respondents (mostly individuals, but also one tobacco industry respondent) with this question as 75% of comments from those that do not support the proposal (i.e. answered “No” to the closed question”) make points in support of it.

“Advertising at a Trade Event for members of that trade where the general public are not invited should be encouraged as it allows its members to gain information on new products to assist in helping reduce tobacco smoking in the UK”.

Individual

It may be that the since the pro-vaping response in all previous questions was “No” that many of these respondents responded “No” to **Question 7** in line with their previous answers. Therefore, support for this proposal among all respondents may be higher than 60.2%.

8.1.2 Respondents who support the proposal

Just over one-sixth of respondents who support the proposal to introduce exemptions to allow advertising at trade-only events provide further explanation.

Theme 1: A need to promote the benefits of vaping over smoking

A common view (e.g. individual respondents, the vaping sector, and tobacco industry) is that this type of advertising is beneficial to encourage smokers to take up vaping and quit tobacco.

“The more people that know about vaping the more help it can be in attaining the ultimate goal of saving lives and becoming a smoke free society”.

Individual

Theme 2: No point in trade shows without advertising

There are several respondents (individuals, the vaping sector, and tobacco industry) who feel that there is not much point in having a trade show if advertising at it is to be banned.

“Not much point having a trade only event if you can't advertise your product. No one would find themselves accidentally at such an event”.

Individual

8.1.3 Respondents who disagree with the proposal

Just under one-tenth of respondents who did not support the proposal to introduce exemptions to allow advertising at trade-only events provide further explanation.

As noted above, most of these comments (mostly from individual respondents) raise points in support of the Scottish Government proposal.

Theme 1: Support for a blanket ban due to health harms of vaping

Of those that appear to genuinely oppose the proposal (all individual respondents), the main comments are that:

- Respondents feel there should be a blanket ban on advertising vaping products anywhere.
- Respondents feel there should be no exceptions due to the addictive nature and health harms associated with vaping.

9 Fines and Penalties

9.1 Question 8a – Fines and penalties

Chapter 2 of the 2016 Act sets out what the maximum penalties are for contraventions of the proposed restrictions. The restrictions proposed in this consultation would be contained in regulations made under that Act and penalties equivalent to similar offences in relation to tobacco.

The Scottish Government propose that the maximum penalties for these offences introduced through the Regulations should be the same as the maximum penalties which apply to similar offences in relation to tobacco. The Scottish Government consider that those penalties are dissuasive but proportionate. There is a distinction made in the 2002 Act between the maximum penalty for the offence of obstructing an authorised officer and the maximum penalty for all the other offences which would also be the case under these proposed regulations.

The maximum penalty for a person found guilty of an offence which involves obstructing an authorised officer would be a fine not exceeding level three on the standard scale (£1,000). For all other offences in respect of advertising and promotion we will be mirroring those set out in the 2016 Act, meaning the maximum penalty for a person found guilty is: (a) on summary conviction to imprisonment for a term not exceeding 12 months, or a fine not exceeding the statutory maximum, or both, or (b) on conviction on indictment to imprisonment for a term not exceeding two years, or a fine, or both.

Do you support the proposal that fines and penalties should mirror those already in place for tobacco products?

Table A8a (Appendix A) provides the quantitative response to Question 8a.

The views of respondents are mixed:

- **Around half of all respondents support the proposal (51.1%)** that fines and penalties should mirror those already in place for tobacco products. The level of support among organisation respondents is higher than among individual respondents (81.1% and 49.6% respectively). Among organisation respondents this includes health organisations, local government, and the tobacco industry.
- **44.5% of all respondents do support the proposal.** Individuals are more likely than organisations to not support the proposal (46.1% and 13.5% respectively). Among organisation respondents this includes the vaping sector.

9.1.1 Respondents who support the proposal

Just over one-tenth of all respondents who support the proposal that fines and penalties should mirror those already in place for tobacco products provide further explanation.

Theme 1: Health harms

Some respondents, including health organisations and individuals, state that the proposal would protect people, particularly non-smokers, never smokers, school children and young people from the negative health harms of vaping products.

Reference is made by these respondents to the use of the bright colours in advertising which may be more attractive to those aged under 18 years. They suggest that fines and penalties would act as a deterrent and help to prevent vaping products being a stepping-stone to tobacco products and addiction.

Theme 2: A consistent approach

Respondents, including health organisations and individuals, feel that having the same level of fines and penalties as tobacco products is important to address breaches in advertising. These respondents say that different fines and penalties may compromise the ability to address the negative health effects of vaping and tobacco products.

Health organisations note that a consistent approach would ensure greater clarity of messaging and would allow for more effective and efficient enforcement by Trading Standards. Some health organisations, however, call for further discussion and debate with the Scottish Government as to whether the benefits of a consistent approach outweigh adopting a more proportionate approach based on the lesser-known longer-term health harms of vaping products.

Despite agreeing with the proposal, some of these respondents question whether it is appropriate to have the same fines and penalties when comparing the health harms of different products. For example, several health organisations state that there is scientific evidence that vaping is less harmful than tobacco products and that further discussion to consider the proportionality of fines and penalties is needed. These respondents acknowledge, however, that having different fines and penalties may confuse the clarity of messaging and effectiveness of enforcement.

Another view expressed (largely by individual respondents) is that both vaping and tobacco products contain nicotine therefore fines and penalties should be the same. These respondents feel that both products have a negative impact on individual and public health (even if the full impact of vaping products long-term use, with or without nicotine, is not yet fully known) and addictive behaviour.

“It is important that we reach a point of clarity where this is concerned and aligning with tobacco is important to protect non-smokers and in particular the next generation of potential never smokers from nicotine addiction, potentially leading to tobacco addiction.”

Joint response from: Scottish Directors of Public Health Group (SDsPH); Public Health Scotland (PHS); and Scottish Health Promotion Managers (SHPM).

Theme 3: Fixed Penalty Notices

Raised to a lesser extent, responses from local government who support the proposal highlight the potential value of Fixed Penalty Notices.

“We would also welcome the adoption of a Fixed Penalty Notice scheme for these offences as an alternative administrative penalty, which would lead to faster resolution and leave reporting to the Procurator Fiscal for only the most serious non-compliances. It is our experience that this has worked well with the Tobacco and Primary Medical Services (Scotland) Act 2010”.

Aberdeen City Council

9.1.2 Respondents who do not support the proposal

Over one-quarter of all respondents who do not support the proposal that fines and penalties should mirror those already in place for tobacco products provide further explanation.

Theme 1: Vaping products and tobacco products are different

The most common theme to emerge, largely from individual respondents and the vaping sector, is that vaping and tobacco products are different products with different levels of harm and risk.

For example, some of these respondents highlight that tobacco products contain other harmful ingredients (e.g. tar) which are not in vaping products – also some individuals note that they use vaping products that are nicotine-free.

Raised to a lesser extent, these respondents feel that the proposal could be counter-intuitive and turn people towards tobacco products by sending a message that the use of vaping and tobacco products carry the same levels of health risks.

Theme 2: The proposal is not considered proportionate

The vaping sector and some individual respondents urge the Scottish Government to adopt an approach to fines and penalties which is proportionate, and which reflects the lower levels of known risk and health harms associated with vaping products compared to tobacco products.

A few individuals go further and say that there should no rules or restrictions at all to the promotion of vaping products given its potential as an alternative to tobacco products.

9.1.3 A need for effective enforcement

Similar to the points raised above regarding equivalence of products, a view from the vaping sector (both those who support and those who do not support the proposal) is that there should be greater enforcement and awareness raising of existing regulations (e.g. stricter penalties for illegal/non-compliant vape products, youth access to vape products) rather than aligning fines and penalties with tobacco products.

These respondents suggest that the proposal adds to the issue of misinformation regarding the relative health harms and risks of vaping products compared to tobacco products.

10 Defences

10.1 Question 8b - Defences

The defences to the offences would also mirror those laid out in the Tobacco Advertising and Promotion Act (TAPA) 2002. This would mean:

- A person would not commit an offence of advertising and promoting a vaping product if they did not know, and had no reason to suspect, that this was the purpose of the advertisement.
- A person would not commit the offence of promoting vaping product if they could not reasonably have foreseen that would be the effect of the advertisement.
- A person would not commit an offence if they did not know, and had no reason to suspect, that the vaping product advertisement would be published in Scotland.
- If an advert is distributed, a person would not commit an offence if (a) they were unaware that what was distributed or caused to be distributed was, or contained, advertising for vaping products; (b) having become aware of it, it was not reasonably practicable for to prevent further distribution.
- A person would not commit an offence if they did not know, and had no reason to suspect, that the publication contained an advertisement for vaping products.

Do you support the proposal that defences should be as laid out as above?

Table A8b (Appendix A) provides the quantitative response to Question 8b.

The views of respondents are mixed:

- **Almost half of all respondents support the proposal (49.5%)** that defences should be as laid out as outlined in the Consultation Paper. The level of support among organisation respondents is higher than among individual respondents (71.4% and 48.5% respectively). Among organisation respondents this includes the tobacco industry and health organisations.
- **39.8% of all respondents do not support the proposal.** Individuals are more likely than organisations to not support the proposal (41.0% and 14.3% respectively). Among organisation respondents this includes local government.

10.1.1 Potential confusion about the question

There appears to be some confusion with this question – most respondents repeat or refer to their responses to previous questions. These mostly relate to general views on tightening advertising restrictions.

10.1.2 Respondents who support the proposal

Only 8% of all respondents who support the proposal provide further explanation relating to the alignment of defences to offences to those laid out in the 2002 Tobacco Advertising and Promotion Act. Many responses simply restate their support for the proposal.

Theme 1: Proposal would ensure a consistent approach

Most respondents (e.g. health organisations) that provide comment feel it would be reasonable and appropriate for the defences to the offences to also mirror those laid out in the 2002 Act for tobacco advertising and promotion (see **Section 9**). These respondents note that this would ensure a consistent approach.

Theme 2: Local authority funding protected for this purpose

Some health organisations request that funding allocated to Local Authorities for the purpose of defences is protected to enable a consistent approach across Scotland. There is, however, recognition among these respondents that “issues with regards distribution of funding may result in this being implemented differently in Local Authorities across Scotland and in some cases, this may lead to differences within Health Board areas”.

Further, ASH Scotland note that “Local Authorities and Trading Standards or equivalent enforcement officers should be adequately resourced to enforce the regulations and have powers to issue fines and penalties in line with those for tobacco regulation infringements”.

10.1.3 Respondents who do not support the proposal

Among respondents who do not support the proposal to mirror defences, one-fifth provide further comment. Most comments do not relate to the proposal about defences and repeat/refer to responses to previous questions:

- These respondents do not support the proposal as they feel it fails to distinguish vaping and tobacco products as different products with different levels of risk and harm.
- A few of these respondents feel that there should be no restrictions placed on advertising (with the implication that defences would not be required).

Theme 1: The proposal presents a potential loophole

Where comments relate to the proposal at **Question 8b**, some respondents feel that there is a potential loophole in mirroring the defences in the 2002 Act as there is said to be too much of a focus on it not being the intention to commit an offence. Local government respondents suggest it may be appropriate to include “a defence of exercising all reasonable precautions and due diligence” rather than simply mirroring the defences of the 2002 Act.

“We have some concerns around the existing defences as laid out in [Tobacco Advertising and Promotion Act (TAPA) 2002], and we would recommend the inclusion of a “reasonable precautions and due diligence” defence rather than the ones suggested and contained in TAPA 2002. This is a widely accepted approach and would afford protection for traders who have been diligent and taken reasonable steps in their business practices, to be able to use this defence against an unwitting mistake or actions of a third party.”

Society of Chief Officers of Trading Standards in Scotland (SCOTSS)

11 Enforcement

11.1 Question 8c - Enforcement

The 2016 Act enables Ministers to add the enforcement of the offences in this consultation to the duties of a council to enforce within its area. This mirrors the enforcement powers provided to council officers as set out in the 2010 Act.

Enforcement should be the responsibility of a designated officer of a local authority. This work is most likely to fall under the auspices of Trading Standards Officers who already have responsibility for ensuring tobacco control legislation is followed as well as UK wide regulations on the sale, purchase, promotion and marketing of vape products. Enforcement of these proposed regulations would be in addition to ensuring compliance to existing regulations and undertaken in the same manner as current routine work.

Do you support the proposal that officers of local authorities should be responsible for enforcement?

Table A8c (Appendix A) provides the quantitative response to Question 8c:

- **Around half of all respondents support the proposal (49.7%)** that officers of local authorities should be responsible for enforcement. The level of support among organisation respondents is higher than among individual respondents (94.3% and 47.5% respectively). There is broad support across all organisation sub-groups, including all local government respondents.
- **Over one-third of all respondents do not support the proposal (37.2%)**. Individuals are more likely than organisations to not support the proposal (38.9% and 2.9% respectively).

11.1.1 Respondents who support the proposal

Almost one-fifth of all respondents who support the proposal that officers of local authorities should be responsible for enforcement provide explanation.

Theme 1: Local authorities are best placed to do this

There is agreement across the consultation responses (e.g. including local government, health organisations, the vaping sector, tobacco industry, and other organisations) that Trading Standard officers within local authorities are best placed to be responsible for enforcement of the proposals.

These respondents note that the proposal to align enforcement with Trading Standards who already deal with UK wide vaping regulations as well as tobacco enforcement and other areas (e.g. alcohol) is a logical approach.

The potential benefits of the proposal are identified by these respondents as: consistency of approach to enforcement; local authorities have existing teams, structures, and “good relations with retailers”; and it would be more efficient for existing teams/structures to take on additional roles (e.g. less training).

11.1.2 Respondents who do not support the proposal

Over one-fifth of all respondents who do not support the proposal provide explanation. The main theme to emerge (i.e. resource and capacity constraints of Trading Standards) is captured under the **Section 11.1.3**.

Theme 1: Working collaboratively

A few individual respondents highlight the importance of Trading Standards working collaboratively with other agencies in relation to enforcement (e.g. the police are mentioned in these consultation responses).

Wider points

While raised to a lesser extent, a view expressed by a few individual respondents, is that local authorities are not as effective as they could be at enforcement, with some providing testimonials. As such, a few individual respondents are sceptical that local authorities should be responsible for the enforcement of the proposed rules.

11.1.3 Resources and capacity of local authorities

Both organisation respondents in support of the proposal and those who do not support the proposal highlight current resource and capacity constraints of local authorities. For example, health organisations, local government, vaping sector, and tobacco industry highlight that the proposal would only be effective with additional and continued funding to support increased workloads.

With different local authorities dealing with financial pressures in different ways, there is also a concern among some of these respondents that enforcement may not be evenly applied across different geographic areas or Health Boards.

“Agree that officers of local authorities should enforce this legislation but they are currently limited with regards resource for tobacco enforcement. Consideration should be given to allowing other agencies to fulfil this type of enforcement in addition to the current requirements.”

NHS Fife

“There is a request that funding allocated to local authorities for this purpose is protected to enable a consistent approach across Scotland.”

National Smoking Cessation Co-ordinators Group

A few respondents suggest that enforcement of the vaping rules may be a much lower priority for Trading Standards (tobacco and alcohol are felt by these respondents to be more important from a public health perspective) and for local authorities more generally. For example, some individuals suggest that a centralised/national/regional approach to enforcement of the rules may be more appropriate, and that this could help ease the resource burden and ensure greater consistency of enforcement across different areas and regions.

“Many local authorities have cut services because they simply can't afford them already and giving them responsibility for this would simply be a further drain on already inadequate resources.”

Individual

12 Impact Assessment

12.1 Question 9a – Impact on individuals

The Scottish Government is committed to equality and ensuring that its policies lead to the creation of a fairer Scotland. The consultation welcomed views on the potential positive and negative impacts that the proposed policy would have on people on the basis of their: age, sex, race, religion, sexual orientation, pregnancy and maternity, disability, gender reassignment and marriage/civil partnership. Respondents were asked to provide evidence where available and comment on each characteristic individually.

Please indicate the impact the proposed policy would have on individuals.

Table A9a (Appendix A) provides the quantitative response to **Question 9a**.

The views of respondents are mixed:

- **Over one-third of all respondents report that the proposals would have a positive impact on individuals (36.9%).** Organisation respondents, including health organisations and local government, are more likely to report a positive impact than individual respondents.
- **Half of all respondents report that the proposals would have a negative impact (50.5%).** Individuals are more likely than organisations to report a negative impact. Among organisation respondents this includes the tobacco industry and vaping sector followed by other organisations.
- Only 3.4% of respondents report no impact. The remainder are unsure.

Some respondents note both positive and negative impacts in their qualitative feedback. This is the same for **Question 9b** and **Question 9c**.

12.1.1 Most comments do not mention protected characteristics

In terms of the impact on individuals, much of the feedback from respondents does not relate to the protected characteristics outlined in the Consultation Paper, except for suggesting a positive impact in relation to age (i.e. children and young people aged under 18 years). To a much lesser extent, impact in pregnancy also is mentioned.

12.1.2 Restating similar points

Much of the feedback from all respondents restates similar points raised elsewhere in the report and therefore these are not repeated here. This is the same for **Question 9b** and **Question 9c**.

12.1.3 A balanced approach

There is wide support across consultation responses, in particular from organisation respondents, for a balanced approach to ensure that certain populations groups are not disadvantaged by the proposed restrictions. All organisation sub-group respondents note that the proposals will impact different groups in different ways.

12.1.4 Age

The main positive impacts on individuals identified by respondents (e.g. some individuals, health organisations, local government) are to do with age. For example, these respondents note that there would be less visibility, availability, and exposure of vaping products among children and young people (as well as adult non-smokers).

12.1.5 Inequalities

Respondents, including health organisations, report that the proposals would improve health for individuals and lead to public health improvement in a wider sense. These respondents report that the proposals would help to reduce health inequalities in the long-term.

The vaping sector and tobacco industry feel that the policy changes may lead to an increase in the number of preventable deaths and worsen existing health inequalities. Further, the same respondents note that this may lead to an increased cost of smoking to the NHS and increased pressure on the NHS. The same respondents feel that the proposals may disproportionately affect vulnerable groups in society.

People living on low incomes are mentioned most often. This population group is considered by these respondents to be more likely to smoke and may not be able to afford to purchase effective harm reduction products and/or be likely to stop smoking cessation programmes early. Other groups were mentioned but with little detail of possible impacts.

12.1.6 Environmental impact

Some health and local government respondents report that the proposals would have a positive impact on individuals from an environmental perspective. For example, there is reference in the consultation responses to: reduced environmental impact (e.g. there is reference to the discard of disposable vapes and that these are not always disposed of correctly); and reduced exposure to second-hand vape aerosol.

12.1.7 Monitoring and evaluating impact

Wider feedback from health organisation respondents is that the impact of the proposed policy would need to be properly monitored through relevant surveys such as Scottish Schools Adolescent Lifestyle and Substance Use Survey (SALSUS) and health surveys and impact evaluated for effectiveness.

12.2 Question 9b – Socio-economic disadvantage

As stated in **Section 12.1**, the Scottish Government is committed to equality and ensuring that its policies lead to the creation of a fairer Scotland. The consultation welcomed views on the potential positive and negative impacts that the proposed policy would have on people living with socio-economic disadvantage. Respondents were asked to provide evidence where available.

Please indicate your view on the impact of the proposed policy on people living with socio-economic disadvantage?

Table A9b (Appendix A) provides the quantitative response to **Question 9b**.

The views of respondents are mixed:

- **Around one-quarter of all respondents report that the proposed policy would have a positive impact** on people living with socio-economic disadvantage (25.5%). Roughly the same proportion of individual respondents and organisation respondents had this view. Among organisation respondents health organisations are most likely to report a positive impact.
- **Almost half of all respondents report that the proposed policy changes would have a negative impact** (48.6%). Slightly more organisation respondents report a negative impact than individual respondents. Among organisation respondents this includes the tobacco industry and the vaping sector.
- A relatively large proportion of respondents “did not know” (19.6%).

12.2.1 Vulnerable groups

Many individual and organisation respondents acknowledge that people living with socio-economic disadvantage are among the most vulnerable groups in society.

Some respondents (e.g. some individuals, health organisations, local government) feel that these groups may be more receptive to the advertising and promotion of certain products, such as e-cigarettes. These respondents note that the proposed policy changes could help avoid this (e.g. lower visibility, lower levels of nicotine addiction, lower risk-taking behaviour, improved health and wellbeing, financial benefit).

Other respondents (e.g. some individuals, health organisations, vaping sector, tobacco industry) report that cost may be a barrier for some people/population groups. These respondents note that access to vaping products as a smoking cessation aid needs to be affordable (e.g. discounted, free, prescribed) for those living in socio-economic disadvantage. These respondents also suggest that there needs to be appropriate advertising, so individuals continue to be motivated to move from tobacco use to alternative non-tobacco products to support stop-smoking attempts. These respondents also note that ready access to e-cigarettes to help quit is important for people living with socio-economic disadvantage as they can also find it harder to stop smoking.

The same respondents also report that the proposed policy could encourage continuation of cigarette smoking within socio-economically disadvantaged communities – they suggest that the weekly cost of cigarette smoking is significantly higher than the cost of vaping (e.g. increased financial burden to consumers, increased poverty, poorer health, more early deaths).

12.2.2 Impact review

It was noted that the Scottish Government should undertake an impact review to ensure people living with socio-economic disadvantage are not disproportionately affected by the proposed policy.

12.2.3 Environmental impact

Some health organisations note that the home environment would improve due to fresh air quality suggesting that this would have positive impact on individuals and children's health.

12.3 Question 9c – Communities and groups

As stated in **Section 12.1** and **12.2**, the Scottish Government is committed to equality and ensuring that its policies lead to the creation of a fairer Scotland. The consultation asked respondents to identify other communities or population groups who may be impacted by this policy proposal. Respondents were asked to consider both the potentially positive and negative impacts and provide evidence where available.

Please identify communities or groups who may be impacted by these proposals.

One-quarter of all respondents provide a response to **Question 9c**.

12.3.1 Communities or population groups

In many cases respondents simply mention a community or population group that may be impacted by the policy proposal and do not necessarily provide more detail.

12.3.2 Reiterating points raised earlier

Others reiterate points raised throughout the consultation, and these points have not been restated here.

13 Further Comments

13.1 Question 10 – Further comments

The final consultation question sought any further comments respondents wish to make on this consultation.

Please outline any other comments you wish to make on this consultation.

There are a total of 261 final comments, equating to 34% of total respondents:

- **Around one-third of these respondents** provide final comments in support of the proposals.
- **Two-thirds of these respondents** provide final comments that are critical of the proposals.

A high proportion of comments simply restate points made elsewhere in the consultation.

13.1.1 Respondents who support the proposals

Theme 1: Broad approval of the Scottish Government proposals

The most common theme raised by these respondents (mostly individuals and health organisations) is approval of the Scottish Government proposals and highlighting the negatives associated with vaping products. The same respondents raise a concern that vaping products are being used as a replacement to smoking as opposed to a method to quit nicotine entirely. Further, some health organisations reiterate a point that the effects of the long-term use of the vaping products are not yet fully known and are supportive of precautionary measures to ensure non-smokers are protected from potential long-term harms.

“Some people see vaping products as a way to smoke but without the harmful effects of cigarettes. If rules around them aren't tightened some people could treat them as a full-time replacement for cigarettes rather than a short-term stop smoking aid.”

Individual

“It is important to note that no evidence of harm does not equal no harm”.

ASH Scotland

Theme 2: Disapproval of people vaping in public places

A number of individual respondents complain about people vaping in public places, including from those individuals who support a ban in line with the smoking ban.

“Vaping is really offensive to non-smokers. I think it's even more revolting to non-smokers than tobacco; the smell and volume of vapour are disgusting. On a personal level, vaping strongly irritates my throat.”

Individual

Theme 3: Further restrictions are suggested

Several further restrictions to be considered are noted by some respondents (e.g. by individuals and health organisations), including:

- Plain packaging/branding or flavouring.
- Vaping products should be hidden from view in shops or available through prescription.
- Single use vapes should be banned to prevent plastic waste.

Theme 4: Protecting children and young people

Many of the comments from respondents (e.g. from individuals, health organisations and local government) support the proposals to help protect children and young people in the long-term. These respondents raise concerns that advertising glamourises vaping to these groups, as they feel vaping products are designed to appeal to children and young people, and that they are far too easy for those who are under-age to buy.

“...we are concerned at the apparent growth in uptake of vaping products in young people across Scotland, witnessed by rising complaints from parents about children vaping at school, increasing prevalence of coloured and child appealing vapes such as ‘fidget spinner’ vapes, and the increasingly easy availability of these products at an increasing number of premises across Scotland.”

The Society of Chief Officers of Trading Standards in Scotland (SCOTSS)

These respondents also express support for more to be done to raise awareness of the impacts of using vaping products (e.g. through a public health campaign for young people). Education is viewed as essential by these respondents to “highlight dangers of vaping both for existing users of vaping products and for potential future users who mistakenly believe that the harms of vaping are insignificant.”

Another concern raised by these respondents is the role of social media influencers promoting vaping products directly to young people.

Theme 5: Appropriate regulation

A point raised (e.g. by some health organisations) is that regulation will have to be carefully drafted due to the evolving nature of vape products, with new products brought onto the market on a regular basis. These respondents feel that a lack of clarity may result in loopholes which could be exploited by industry.

“Vaping products are continually evolving with thousands of products now on the market. Ensure legislation is written to ensure there are no loopholes that can be exploited by the tobacco / vaping industry through product, marketing etc. innovation. Ensure legislation is comprehensive to encompass the range of products available and as in the future.”

NHS Orkney Public Health

13.1.2 Respondents who do not support the proposals

Theme 1: The benefits of vaping over smoking

A key theme from respondents who do not support the proposals relate to promoting the benefits of vaping (primarily from some individual respondents, but also from the vaping sector, tobacco industry, and other organisations) and that further restrictions on advertising would prevent adult smokers from gaining the information needed to make informed choices.

Theme 2: Personal testimonials

There are many personal testimonials from individual respondents who have given up smoking and used vapes to help quit. These responses highlight the number of years they smoked cigarettes, the health problems they experienced from smoking tobacco products, and the difficulties they had giving up smoking using other methods.

“I was a smoker of 20+ years and in the latter years smoking up to 50 cigarettes per day. 8 years ago, my partner found information on these products and convinced me to try them as a method of quitting, in which I was finally successful. Prior to this I had tried several times with traditional NRT through the stop smoking service with the NHS each time reverting back to smoking.

Individual

“Vaping saved my life. I had tried quitting smoking for over 5 years and struggled at every turn. Vaping helped me quit almost instantly, with only a 1 day transition period. If restrictions come to vaping, it would be a disservice to the country and would only encourage more people - including children - to pick up smoking.”

Individual

Theme 3: Evidence presented in the Consultation Paper

Some respondents (some individual respondents and the vaping sector) question the partiality of the evidence base presented in the Consultation Paper and/or disagree with the evidence base presented. These respondents cite a lack of studies within the Consultation Paper that highlight the effectiveness of vapes as a smoking cessation tool or the relative lack of health harms compared to smoking.

Others disagree with points raised in the Consultation Paper such as 'Vaping products should only be used as a tool to help people stop smoking tobacco', “They are not a lifestyle accessory”, and “Vape products should only be used as a way to stop smoking tobacco and people should aim to use vapes for a short time”.

Theme 4: Freedom of choice

The freedom of choice point is also made by some individual respondents. The feedback is that restrictions on advertising were felt to be an unnecessary infringement on personal liberty.

“People should have the freedom to choose whether to vape or not the same as smoking.”

Individual

Appendix A: Closed Question Responses

Table A1: Do you agree that vapes should only be used as a stop-smoking aid and that we restrict advertising exposure to non-smokers?

	Yes	No	Don't know
Individual	49.4%	49.1%	1.5%
Organisation	73.2%	22.0%	4.9%
Total	50.7%	47.6%	1.7%
Organisational Breakdown:			
Health	100.0%	0.0%	0.0%
Local government	100.0%	0.0%	0.0%
Other	37.5%	50.0%	12.5%
Tobacco industry	0.0%	66.7%	33.3%
Vaping sector	50.0%	50.0%	0.0%

N=752 (711 individuals and 41 organisations). Excludes blank and not answered responses.

Table A2: Do you agree with proposal to extend restrictions on advertising these products in the ways described?

	Agree	Don't agree	Don't know
Individual	47.9%	49.0%	3.1%
Organisation	58.1%	34.9%	7.0%
Total	48.5%	48.2%	3.3%
Organisational Breakdown:			
Health	95.0%	0.0%	5.0%
Local government	100.0%	0.0%	0.0%
Other	25.0%	62.5%	12.5%
Tobacco industry	0.0%	100.0%	0.0%
Vaping sector	0.0%	85.7%	14.3%

N=755 (712 individuals and 43 organisations). Excludes blank and not answered responses.

Table A3: Do you agree with proposal that in-store promotional displays should be banned?

	Yes	No	Don't know
Individual	43.8%	54.8%	1.4%
Organisation	61.9%	35.7%	2.4%
Total	44.8%	53.8%	1.5%
Organisational Breakdown:			
Health	95.0%	5.0%	0.0%
Local government	100.0%	0.0%	0.0%
Other	25.0%	62.5%	12.5%
Tobacco industry	0.0%	100.0%	0.0%
Vaping sector	16.7%	83.3%	0.0%

N=755 (713 individuals and 42 organisations). Excludes blank and not answered responses.

Table A4: Do you think brand-sharing should be an offence?

	Yes	No	Don't know
Individual	46.6%	46.1%	7.3%
Organisation	73.7%	15.8%	10.5%
Total	47.9%	44.6%	7.5%
Organisational Breakdown:			
Health	94.7%	0.0%	5.3%
Local government	100.0%	0.0%	0.0%
Other	83.3%	0.0%	16.7%
Tobacco industry	0.0%	100.0%	0.0%
Vaping sector	16.7%	50.0%	33.3%

N=749 (711 individuals and 38 organisations). Excludes blank and not answered responses.

Table A5a: Should distributing vape products free be an offence?

	Yes	No	Don't know
Individual	41.4%	55.0%	3.7%
Organisation	68.4%	26.3%	5.3%
Total	42.7%	53.5%	3.7%
Organisational Breakdown:			
Health	100.0%	0.0%	0.0%
Local government	100.0%	0.0%	0.0%
Other	40.0%	40.0%	20.0%
Tobacco industry	0.0%	100.0%	0.0%
Vaping sector	14.3%	71.4%	14.3%

N=749 (711 individuals and 38 organisations). Excludes blank and not answered responses.

Table A5b: Should offering vapes at very reduced prices be an offence?

	Yes	No	Don't know
Individual	35.4%	61.7%	2.9%
Organisation	63.2%	31.6%	5.3%
Total	36.8%	60.1%	3.1%
Organisational Breakdown:			
Health	94.7%	5.3%	0.0%
Local government	100.0%	0.0%	0.0%
Other	40.0%	40.0%	20.0%
Tobacco industry	0.0%	100.0%	0.0%
Vaping sector	0.0%	85.7%	14.3%

N=750 (712 individuals and 38 organisations). Excludes blank and not answered responses.

Table A6: Should making sponsorship arrangements with a vaping product be an offence?

	Yes	No	Don't know
Individual	43.5%	50.2%	6.3%
Organisation	73.0%	18.9%	8.1%
Total	44.9%	48.7%	6.4%
Organisational Breakdown:			
Health	94.7%	0.0%	5.3%
Local government	100.0%	0.0%	0.0%
Other	60.0%	0.0%	40.0%
Tobacco industry	0.0%	100.0%	0.0%
Vaping sector	33.3%	66.7%	0.0%

N=748 (711 individuals and 37 organisations). Excludes blank and not answered responses.

Table A7: Should advertising at trade-only events be allowed?

	Yes	No	Don't know
Individual	59.5%	29.0%	11.5%
Organisation	73.0%	8.1%	18.9%
Total	60.2%	27.9%	11.9%
Organisational Breakdown:			
Health	77.8%	5.6%	16.7%
Local government	75.0%	0.0%	25.0%
Other	66.7%	16.7%	16.7%
Tobacco industry	50.0%	50.0%	0.0%
Vaping sector	71.4%	0.0%	28.6%

N=748 (711 individuals and 37 organisations). Excludes blank and not answered responses.

Table A8a: Should fines and penalties for breaking the rules on advertising and promoting vape products be the same as those for tobacco?

	Yes	No	Don't know
Individual	49.6%	46.1%	4.4%
Organisation	81.1%	13.5%	5.4%
Total	51.1%	44.5%	4.4%
Organisational Breakdown:			
Health	100.0%	0.0%	0.0%
Local government	100.0%	0.0%	0.0%
Other	60.0%	20.0%	20.0%
Tobacco industry	100.0%	0.0%	0.0%
Vaping sector	28.6%	57.1%	14.3%

N=749 (712 individuals and 37 organisations). Excludes blank and not answered responses.

Table A8b: Should the defences for breaking the rules on advertising and promoting vape products be the same as those for tobacco?

	Yes	No	Don't know
Individual	48.5%	41.0%	10.5%
Organisation	71.4%	14.3%	14.3%
Total	49.5%	39.8%	10.7%
Organisational Breakdown:			
Health	94.4%	0.0%	5.6%
Local government	50.0%	50.0%	0.0%
Other	60.0%	20.0%	20.0%
Tobacco industry	100.0%	0.0%	0.0%
Vaping sector	16.7%	33.3%	50.0%

N=747 (712 individuals and 35 organisations). Excludes blank and not answered responses.

Table A8c: Should local authorities be responsible for enforcing the rules?

	Yes	No	Don't know
Individual	47.5%	38.9%	13.6%
Organisation	94.3%	2.9%	2.9%
Total	49.7%	37.2%	13.1%
Organisational Breakdown:			
Health	94.4%	0.0%	5.6%
Local government	100.0%	0.0%	0.0%
Other	100.0%	0.0%	0.0%
Tobacco industry	100.0%	0.0%	0.0%
Vaping sector	83.3%	16.7%	0.0%

N=747 (712 individuals and 35 organisations). Excludes blank and not answered responses.

Table A9a: How would the proposals impact individuals?

	Positive impact	Negative impact	No impact	Don't know
Individual	36.2%	51.3%	3.4%	9.0%
Organisation	50.0%	33.3%	2.8%	13.9%
Total	36.9%	50.5%	3.4%	9.3%
Organisational Breakdown:				
Health	76.5%	5.9%	0.0%	17.6%
Local government	50.0%	0.0%	25.0%	25.0%
Other	33.3%	50.0%	0.0%	16.7%
Tobacco industry	0.0%	100.0%	0.0%	0.0%
Vaping sector	14.3%	85.7%	0.0%	0.0%

N=745 (709 individuals and 36 organisations). Excludes blank and not answered responses.

Table A9b: How would the proposals impact people living with socio-economic disadvantage?

	Positive impact	Negative impact	No impact	Don't know
Individual	25.5%	48.4%	6.5%	19.6%
Organisation	25.0%	52.8%	2.8%	19.4%
Total	25.5%	48.6%	6.3%	19.6%
Organisational Breakdown:				
Health	40.0%	46.7%	0.0%	13.3%
Local government	0.0%	0.0%	25.0%	75.0%
Other	28.6%	42.9%	0.0%	28.6%
Tobacco industry	0.0%	100.0%	0.0%	0.0%
Vaping sector	14.3%	85.7%	0.0%	0.0%

N=745 (709 individuals and 36 organisations). Excludes blank and not answered responses.

Appendix B: Organisation Respondents

Table B1: Organisation Sub-Groups

Sub-Group	Organisation Name
Health	<ul style="list-style-type: none"> • Academy of Medical Royal Colleges and Faculties in Scotland • ASH Scotland • Asthma + Lung UK Scotland • Cancer Research UK • Fast Forward • Glasgow City Health & Social Care Partnership • Joint response from: Scottish Directors of Public Health Group (SDsPH), Public Health Scotland (PHS), and Scottish Health Promotion Managers (SHPM) • National Smoking Cessation Co-ordinators Group • NHS Greater Glasgow and Clyde • NHS Fife • NHS Lanarkshire Tobacco Control Management team • NHS Lanarkshire Tobacco Control Team • NHS Lanarkshire - South Lanarkshire Focus Group • NHS Orkney Public Health • NHS Tayside • Royal College of Paediatrics and Child Health Scotland • Royal College of Physicians and Surgeons of Glasgow • Royal Environmental Health Institute of Scotland • Scottish Coalition on Tobacco (SCOT) • The Royal College of Physicians of Edinburgh
Local Government	<ul style="list-style-type: none"> • Aberdeen City Council • Glasgow City Council • Perth & Kinross Council • Society of Chief Officers of Trading Standards in Scotland (SCOTSS)
Other	<ul style="list-style-type: none"> • Association of Convenience Stores • Consumer Choice Center • NFRN (The Federation of Independent Retailers) • Pharmacy* • Scottish Grocers Federation • Scottish Wholesale Association • University of Glasgow MRC/CSO Social and Public Health Sciences Unit • Winning Scotland

* The pharmacy has been coded as “Other” rather than “Health” as they sell vaping products (e.g. smoking cessation aids).

Table B1: Organisation Sub-Groups (continued)

Sub-Group	Organisation Name
Tobacco Industry	<ul style="list-style-type: none">• British American Tobacco (BAT) UK• Imperial Brands Plc (IMB)• Japan Tobacco International (JTI)• Philip Morris Ltd
Vaping Sector	<ul style="list-style-type: none">• Danish Vapers Association• DripDrop Vapour• LIQUID MIST• Juul Lab• Independent British Vape Trade Association (IBVTA)• UK Vaping Industry Association• VPZ

Appendix C: Publication of Responses

The tables below provide details of respondents that indicated that their response could be published (with or without the named contact of who submitted the response).

Of the 757 responses:

- 189 selected “publish response (with name)”, including 26 organisations, **Table C1**.
- 482 selected “publish response only (without name)”, including 12 organisations, **Table C2**.
- 86 selected “Do not publish”, mostly individuals and five organisations, **Table C3**.

Table C1: Publish Response (With Name) - Organisations

<ul style="list-style-type: none"> • Aberdeen City Council • Academy of Medical Royal Colleges and Faculties in Scotland • ASH Scotland • Association of Convenience Stores • Consumer Choice Center • Cancer Research UK • Glasgow City Health & Social Care Partnership • Imperial Brands Plc • Japan Tobacco International • Joint response from SDsPH, PHS, and SHPM • Juul Lab • National Smoking Cessation Co-ordinators Group • NFRN (The Federation of Independent Retailers) 	<ul style="list-style-type: none"> • NHS Fife • NHS Greater Glasgow and Clyde • NHS Lanarkshire Tobacco Control Team • NHS Lanarkshire Tobacco Control Management Team • NHS Lanarkshire - South Lanarkshire Focus Group • NHS Orkney Public Health • PHILIP MORRIS LIMITED • Royal College of Paediatrics and Child Health Scotland • Royal College of Physicians and Surgeons of Glasgow • Scottish Grocers Federation • Scottish Coalition on Tobacco (SCOT) • UK Vaping Industry Association • Winning Scotland
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Table C2: Publish Response Only (Without Name) - Organisations

<ul style="list-style-type: none">• Asthma + Lung UK Scotland• Danish Vapers Association • DripDrop Vapour• Glasgow City Council • Independent British Vape Trade Association (IBVTA)• Liquid Mist	<ul style="list-style-type: none">• Perth & Kinross Council• Royal Environmental Health Institute of Scotland• Scottish Wholesale Association• Society of Chief Officers of Trading Standards in Scotland (SCOTSS)• The Royal College of Physicians of Edinburgh • University of Glasgow MRC/CSO Social and Public Health Sciences Unit

Table C3: Do Not Publish Response - Organisations

<ul style="list-style-type: none">• British American Tobacco (BAT) UK• Fast Forward• Pharmacy	<ul style="list-style-type: none">• NHS Tayside• VPZ

Note: VPZ did not submit a Respondent Information Form (RIF). As a result, the response was coded "Do not publish".

Appendix D: Satisfaction with this Consultation

Table D1: How satisfied were you with this consultation?

	Individuals	Organisations	Total
Very satisfied	24.2%	31.6%	24.4%
Slightly Satisfied	18.6%	26.3%	18.8%
Neither/nor	35.7%	26.3%	35.4%
Slightly Dissatisfied	8.7%	0.0%	8.5%
Very dissatisfied	12.9%	15.8%	13.0%

N=709 (690 individuals and 19 organisations). Excludes blank responses.

Table D2: How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?

	Individuals	Organisations	Total
Very satisfied	37.3%	31.6%	37.1%
Satisfied	22.4%	21.1%	22.3%
Neither/nor	32.3%	31.6%	32.3%
Dissatisfied	2.6%	5.3%	2.7%
Very dissatisfied	5.4%	10.5%	5.5%

N=703 (684 individuals and 19 organisations). Excludes blank responses.



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