

# **Government response to consultation on ‘Implementing the prohibition of the sale and supply of single-use vapes in Scotland: your views’**

June 2024

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Between 2 April 2024 and 14 May 2024 we held a public consultation on the implementation of the proposed prohibition of the sale and supply of single-use vapes. This included updated Regulations, a suite of draft impact assessments including the Partial Business and Regulatory Impact Assessment (BRIA), and a Strategic Environmental Assessment (SEA) Environmental Report.

We received 45 responses to this consultation (43 via Citizen Space, and two via email). Of these, 27 responded as individuals and 18 on behalf of an organisation. 14 respondents stated that they had links to organisations representing the interests of children and young people. Two respondents stated that they had links to organisations that represent Scottish island communities. 13 respondents stated that they had links to an organisation that represents people with protected characteristics. A further 13 respondents stated that they had links to an organisation that represents people who experience socio-economic disadvantage.

The United Kingdom is a party to the World Health Organization’s Framework Convention on Tobacco Control. Of particular relevance to the proposed ban is Article 5.3 of the Framework Convention. The Scottish Government is committed to protecting the development of public health policy and tobacco control generally from the vested interests of the tobacco industry, ensuring compliance with the UK’s international obligations when pursuing policies in devolved areas.

To meet this obligation we asked respondents to declare any direct or indirect links to, or funding received from, the tobacco industry, and to explain what these were. Of those who responded, four declared direct links to the tobacco industry, while all others stated that they had no links.

We would consider a direct link to be a person, company, or organisation who receives funding directly from the tobacco industry, or an organisation which has tobacco companies as members. We would consider an indirect link to be any person, company, or organisation who derives any form of indirect benefit from the tobacco industry – this would include retailers who sell tobacco products, or anyone who receives gifts, services, or hospitality from tobacco companies.

Where responses from organisations with direct links to the tobacco industry are noted in this consultation analysis, their links to the tobacco industry have been highlighted. In line with the requirements of article 5.3 of the FCTC, we have not considered the views of those with links to the tobacco industry when determining our policy response and amendments to the draft Regulations, due to the vested interests of the tobacco

industry. In the interests of accountability and transparency it is our intention publish and make publicly available the responses of those respondents in due course.

### **Question 1: Do you have any additional feedback on the updated Regulations?**

33 respondents provided additional feedback on the updated Regulations.

Most respondents expressed support for the updates to the Regulations or for a ban on the sale and supply of single-use vapes more generally. Common themes within the feedback on the updated regulations included support for the updated enforcement powers around entering premises, and that the updated definition of 'separately available' in the context of a single-use container now captured the intended range of products.

The most common concerns expressed by respondents were around enforcement. Several respondents stated that the Regulations did not place statutory duties on Local Authorities, which may lead them to choose not to enforce the duties in the Regulations if they feel they lack the resources. In relation to this point, several respondents also expressed a need for additional funding for Trading Standards.

Several respondents also expressed concerns around the enforcement powers set out in the Regulations. Most notably, concerns were raised around the lack of forfeiture orders, powers to enter premises, make test purchases, seize documents, the number of enforcement officers able to enter premises, the use of the term 'reason to believe' as opposed to 'reason to suspect', and the lack of fixed penalty notices.

The other most common concern was around the definition of single-use vape in the Regulations. Several respondents expressed that this definition should be revised to consider devices with refillable pods if these are not separately available, noting the risk of cheap pod-based vapes being treated as single-use. Other suggestions included replacing the term 'coil' with 'heating element', and replacing the term 'vape' with 'e-cigarette' or 'electronic cigarette'.

**Government Response:** Consultation responses showed support for measures and updated Regulations, with a need to ensure a strong definition of single-use vapes and the importance of adequate enforcement.

Having considered consultation feedback, importance of alignment across the UK, and interaction with existing legislation, we consider that the current definition with some minor amendment following consideration of the responses to the consultation on the draft Regulations remains appropriate after updates were made following the draft Regulations consultation.

We agree with the need for effective enforcement, but do not believe it necessary to place a statutory duty on Local Authorities to carry out this function. We have considered the enforcement measures in light of existing powers and have made no further changes to the updated Regulations. However, the Circular Economy (Scotland) Bill, currently before the Scottish Parliament, contains provision to enable the use of fixed penalty notices in regulations made under section 140 of the Environmental Protection Act 1990 (as is the case for the Regulations). If the Bill is enacted, this will allow for future amendment to the Regulations to enable the use of fixed penalty notices for enforcement purposes.

We continue to collaborate closely with Trading Standards and COSLA to understand the regulatory burdens associated with enforcement and any associated funding, as well as assessing the potential savings and benefits.

**Question 2: Do you have any views on what will be required to implement the ban on single-use vapes, including on enforcement?**

37 respondents provided views on what will be required to implement the ban on single-use vapes, including on enforcement.

The most common theme amongst responses was the need for increased enforcement powers in relation to forfeiture, powers to seize and destroy, enter premises, make test purchases and seize documents. Further powers were also requested to allow enforcement officers to issue fixed penalty notices. In addition to increased enforcement powers, several respondents also stated that Local Authorities should have a statutory duty to enforce the Regulations.

Another common theme was in regards to increased funding for Trading Standards to enforce the ban. Many respondents raised concerns about the potential growth of the illicit market once the ban is enforced, and argued that additional resources and funding will be required to prevent this. In addition, respondents including one with direct links to the tobacco industry raised concerns about funding for the disposal of illicit vapes which fall outside of the Waste Electrical and Electronic Equipment (WEEE) producer responsibility system.

Other common themes included the need for an import ban to prevent single-use vapes entering the country, which would require funding and strengthening the capacity of border force.

Respondents also called for awareness raising campaigns for consumers in terms of the environmental impact of single-use vapes, and how to recycle them correctly.

Respondents also requested guidance for retailers in advance of the implementation of the ban, and sufficient lead-in time to ensure retailers can clear stock.

Lastly, several respondents called for a clear definition for 'single-use vape', including an update to the Medicines and Healthcare Products Regulatory Agency (MHRA).

**Government Response:** Consultation responses showed support for measures with a need to ensure sufficient enforcement powers for Trading Standards officers.

As for Question 1, we have considered the enforcement measures in light of existing powers and have decided to make no further changes to the updated Regulations. However, the Circular Economy (Scotland) Bill, currently before the Scottish Parliament, contains provision to enable the use of fixed penalty notices in regulations made under section 140 of the Environmental Protection Act 1990 (as is the case for the Regulations). If the Bill is enacted, this will allow for future amendment to the Regulations to enable the use of fixed penalty notices for enforcement purposes. We continue to collaborate closely with Trading Standards and COSLA to understand the regulatory burdens associated with enforcement and any associated funding, as well as assessing the potential savings and benefits.

The Scottish Government is unable to consider an import ban, as this is a reserved matter under the Scotland Act 1998.

We agree with the need to ensure that the public and retailers are aware of regulations in advance of their implementation. We will work with the other UK governments to ensure an aligned approach.

### **Question 3: Do you have any comment or feedback on our interim Partial Business and Regulatory Impact Assessment?**

28 respondents provided feedback on the interim Partial Business and Regulatory Impact Assessment (BRIA). Of those, 10 largely agreed with the ban, and cited the focus on the environmental impact of single-use vapes in the BRIA as a positive.

4 respondents somewhat agreed with the ban, however they cited concerns around enforcement funding for local authorities, and the impact a ban may have on small retailers. One respondent suggested the need for further thought to be given to the illicit market for single-use vapes and how this is being accessed, citing Australia as an example of where young people turned to the illicit market following the introduction of a ban.

6 respondents indicated that they did not agree with the contents of the BRIA. Feedback highlighted the need for more data on the illicit single-use vapes market, expected

consumer habit changes, the implications on online sales, and figures on the percentage of single-use vapes within the UK vapes market cited from Defra's Impact Assessment. Some respondents stated that compliance from retailers is an issue due to low levels of engagement and awareness.

**Government Response:**

We have updated our final Business and Regulatory Impact Assessment (BRIA) to reflect the feedback from this consultation. This included updating our data with regards to the lost profits to industry as a result of the ban, and on expected consumer habit changes and their implications on the sales of reusable vapes, illicit single-use vapes, and tobacco.

**Question 4: Do you have any comment or feedback on our interim Fairer Scotland Duty Assessment Summary?**

20 respondents provided comment or feedback on the interim Fairer Scotland Duty Assessment Summary (FSDA). 4 respondents were fully supportive of the ban, and expressed that they were content with the FSDA.

3 respondents were somewhat supportive of the FSDA, agreeing with areas highlighted in the FSDA to be aware of and monitor as the ban is implemented.

**Government Response:**

We have updated our final Fairer Scotland Duty Assessment (FSDA) to reflect the feedback from this consultation.

**Question 5: Do you have any comment or feedback on our interim Equalities Impact Assessment Results?**

20 respondents provided feedback on our interim Equalities Impact Assessment Results (EQIA). 3 respondents agreed with the findings in the EQIA that the impact on groups with protected characteristics is likely to be limited, and that the policy will be beneficial.

3 respondents somewhat agreed with the content of the EQIA, in particular the potential impacts highlighted in the EQIA to be monitored, including a call for further support for certain groups as required, including those suffering from mental health issues.

**Government Response:**

We have updated our final Equalities Duty Impact Assessment (EQIA) to reflect the feedback from this consultation.

### **Question 6: Do you have any comment or feedback on our Island Communities Impact Screening Assessment?**

18 respondents provided feedback on the Island Communities Impact Screening Assessment (ICIA). 3 respondents agreed with the content of the ICIA and the ban more generally. One of these respondents highlighted improvements to collection and transport off-island of used vapes.

13 respondents responded with 'no comment' or commented with no relevant information. 2 respondents suggested that they did not think an ICIA was required.

#### **Government Response:**

We have updated our final Island Communities Impact Assessment (ICIA) to reflect the feedback from this consultation.

### **Question 7: Do you have any comment or feedback on our interim stage 2 Child Rights and Wellbeing Impact Assessment?**

30 respondents provided feedback on the interim stage 2 Child Rights and Wellbeing Impact Assessment (CRWIA).

Of these, 12 respondents were supportive of the ban and the contents of the CRWIA. 10 of these respondents expressed concern about the health impact of single-use vapes on children, particularly due to the lack of evidence on long-term health impacts, and expressed support for measures to make these products less available. One respondent suggested that the retail registered should be reviewed and replaced with a licensing system for the sale of vaping products. Two respondents stated that they were pleased to see the level of consultation with young people on this issue, however also noting the need for additional support around issues such as peer pressure and young people's mental health, which drive young people to vape.

3 respondents expressed some support for the ban and the findings of the CRWIA. Responses noted evidence of low levels of compliance with the restrictions of vape sales to young people who are underage, the importance of education and awareness of the impact of vaping, and the potential need for support from support from teachers, community health workers and others involved in the care of young people.

4 respondents indicated that they did not agree with the contents of the CRWIA but with no specific detail.

#### **Government Response:**

We have updated our final Stage 2 Child Rights and Welfare Impact Assessment (CRWIA) to reflect the feedback from this consultation.

**Question 8: What are your views on the accuracy and scope of the information used to describe the Strategic Environmental Assessment (SEA) environmental baseline set out in the Environmental Report?**

23 respondents responded on the accuracy and scope of the information used to describe the Strategic Environmental Assessment (SEA) environmental baseline set out in the Environmental Report.

Of these, 11 respondents expressed that they agreed either with the environmental baseline or with the contents of the SEA more generally. One respondent highlighted that in 2022, at which point environmental and public health concerns around youth vaping were emerging, only a fraction of retailers had the legally required measures in place under the Waste Electrical and Electronic Equipment Regulations 2013 (the WEEE Regulations) and the Waste Batteries and Accumulators Regulations 2009 around recycling of single-use vapes. They further stated that in 2022, test purchasing data from Trading Standards showed that one in eight retailers failed test purchasing tests.

4 respondents indicated that they did not agree with the environmental baseline in the SEA, or the contents of the SEA more generally.

**Government Response:**

As the majority of respondents agreed with the environmental baseline set out in the Environmental Report, or the SEA more generally, we consider that the Environmental Report does not need to be updated.

**Question 9: What are your views on the reasonable alternatives set out in the Environmental Report?**

23 respondents provided views on the reasonable alternatives set out in the Environmental Report.

Six respondents agreed with the report that the reasonable alternatives had been considered in detail, and that these would not bring the same level of environmental benefit as a ban. One respondent stated that pharmacists would likely feel uncomfortable prescribing a product where there is a lack of evidence regarding long-term health impacts. Two respondents mentioned that the component parts of single-use vapes have lifespans greater than the final product itself, meaning that if recycled,



the batteries and coils would be recycled earlier than required, causing an unnecessary waste of resources. One respondent argued that option one was not reasonable, as the tobacco and vaping industry will not successfully self-regulate to meet the requirements under the WEEE Regulations. They further claimed that option 2 may lead to more awareness, but not increased recycling, as has been the case for battery recycling.

One respondent somewhat agreed with the report, stating that the alternatives are reasonable, but unlikely to have a significant effect.

One respondent with direct links to the tobacco industry stated that they disagreed with the report.

**Government Response:**

As the majority of respondents agreed with the assessment of the reasonable alternatives set out in the Environmental Report, or the SEA more generally, we consider that the Environmental Report does not need to be updated.

**Question 10: What are your views on the predicted environmental effects as set out in the Environmental Report?**

23 respondents provided views on the predicted environmental effects as set out in the Environmental Report. Of these, most responses supported the assessment in the report that a ban would have significant positive environmental outcomes. One respondent highlighted that the environmental impact was one of the most frequent reasons young people gave for supporting a ban, noting concerns around littered single-use vapes and the impact this could have on local wildlife.

One respondent disagreed with the findings of the report.

**Government Response:**

As the majority of respondents agreed with the predicted environmental effects set out in the Environmental Report, or the SEA more generally, we consider that the Environmental Report does not need to be updated.

**Question 11: What are your views on the findings of the Environmental Report and the proposals for mitigation and monitoring of the environmental effects?**

18 respondents provided views on the findings of the Environmental Report and the proposals for mitigation and monitoring of the environmental effects.

4 respondents expressed that they agreed with the additional actions to minimise the risk of reusable vapes or their components or packaging being littered or incorrectly disposed of. This included support for a communications campaign aimed at retailers selling single-use vapes, an 11 month lead-in time, and the proposals for enforcement data on recorded incidents.

2 respondents mentioned the need for funding and resources for Trading Standards in order to successfully enforce the ban and limit the potential growth of the illicit market.

**Government Response:**

As the majority of respondents agreed with the findings of the Environmental Report, the proposals for mitigation and monitoring, or the SEA more generally, we consider that the Environmental Report does not need to be updated.

**Question 12: Do you have any general comment or feedback on our Strategic Environmental Assessment (SEA) Environmental Report?**

18 respondents provided general comments or feedback on our Strategic Environmental Assessment (SEA) Environmental Report.

One respondent stated that effort should be made to ensure that reusable vapes and their packaging can be recycled appropriately alongside the ban, as these are likely to grow in use.

**Government Response:**

As the majority of respondents agreed with the Environmental Report, or the SEA more generally, we consider that the Environmental Report does not need to be updated.



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