

Tightening rules on advertising and promoting vaping products

Consultation Paper 2022

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Ministerial Foreword

Non-communicable diseases such as cancer, heart disease, stroke, diabetes and lung disease contribute to more than two-thirds of all deaths in Scotland every year. Sadly, many of these deaths are wholly preventable. Smoking is the direct cause of 16% of all deaths in Scotland and kills two in every three long-term smokers. It is the leading cause of preventable cancer, contributes to cardio-vascular and pulmonary health problems and has a significant negative impact at all stages of life – from causing sudden and unexpected death in infants to dementia in later life.

Although smoking rates are falling in all our communities, those living in less wealthy areas are five times more likely to smoke than those in more affluent areas. In addition, young carers and care experienced young people are more likely to smoke.

While we continue to work towards addressing historic trends of high smoking rates, we are aware that technological and cultural advancements can bring about new public health concerns. The emergence of vaping products, including electronic cigarettes, as an alternative to tobacco is one such concern. The full impact of their long-term use is not yet known and could have a negative impact on public health in years to come.

Scotland has a world-leading approach to public health initiatives and, as the health impacts generated by long-term use of these products, with or without nicotine, are currently uncertain, the Scottish Government proposes to do what is within our devolved powers to restrict the advertising channels not currently banned (such as billboards and bus shelters, etc.).

We also propose to introduce restrictions on other promotional activity such as free distribution, sponsorship and brand sharing – where the logos and/or colours of a particular product are used on an unrelated product for promotional purposes – to more fully protect non-smokers. Reducing exposure to the advertising and promotion of vape products is the best way to protect non-smokers, young people and children from being enticed to experiment with these products. Vaping products should only be used as a tool to help people stop smoking tobacco. They are not a lifestyle accessory.

This consultation was a commitment in our [Raising Scotland's tobacco-free generation: our tobacco control action plan 2018 - gov.scot \(www.gov.scot\)](http://www.gov.scot/resources/documents/2018/04/Raising_Scotland_s_tobacco_free_generation_our_tobacco_control_action_plan_2018_-_gov.scot.pdf). It seeks views on proposed regulations which aim to strike a balance between protecting non-smokers and making information available to smokers. Your responses will help shape the extent of these regulations.

Maree Todd

Minister for Public Health, Women's Health and Sport

Consultation Aims

While current evidence indicates that vaping products are less harmful than smoking tobacco, we 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 will take decades.

Early indications from studies have shown a potential link between use of e-cigarettes containing nicotine and the development of lung diseases such as chronic obstructive pulmonary disease (COPD)¹. For that reason, 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 2018² 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) 2018³ showed that vape use by young people has increased since 2015. The number 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 suggests that young people are finding these products to be attractive.

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. We 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; and
- sponsoring an activity, event or person.

Nicotine is highly addictive and is present in most vape liquids to mimic the effects from smoking traditional cigarettes. Non-smokers who take up vaping are therefore also at risk from the adverse effects of nicotine to which they would not otherwise be exposed. This means that non-smokers who vape could also become addicted to these devices. The proposals will also cover non-nicotine containing vaping liquids given the presence of potentially harmful toxins and chemicals in all vaping liquids, as set out in this consultation paper.

¹ [Original article: Chronic electronic cigarette exposure in mice induces features of COPD in a nicotine-dependent manner \(nih.gov\)](#)

² [Raising Scotland's Tobacco-free Generation: Our Tobacco-Control Action Plan 2018](#)

³ [The Scottish Schools Adolescent Lifestyle and Substance Use Survey \(SALSUS\) 2018](#)

At the same time as reducing the visibility of these products we 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.

This consultation seeks views on whether restrictions are needed to help us strike a balance between these aims.

What are vaping products?

1. A vaping product is any device, or part of that device, which is intended to enable the inhalation of nicotine-containing vapour, or any device intended to resemble and be operated in the same way. Although most vapours do contain nicotine there are also non-nicotine vapours now on the market. All substances intended to be vaporised in these devices (and their containers) are also vaping products. Also, as discussed later in this consultation paper, there are risks associated with the inhalation of all vaping liquids due to the chemicals and toxins in them. Therefore, the proposed advertising restrictions would apply to electronic cigarettes and vapes of all types as well as liquids (nicotine and non-nicotine liquids), and component parts such as cartomisers, coils or tanks.

2. Invented in China in 2003, electronic cigarettes have fast evolved since they were introduced to the UK market in 2007, gaining popularity in the last decade⁴. Initial products mimicked combustible cigarettes in shape and size, delivering vaporised nicotine in a similar way to their traditional counterpart. Products have become more sophisticated over the past decade or more and have become increasingly popular, creating a new industry.



⁴ [E-cigarettes: what we know and what we don't - Cancer Research UK - Cancer news](#)

3. These battery powered devices consist of an atomiser and container, such as a tank or cartridge containing liquid. When heated the liquid creates vapour which is inhaled in the same way as smoking a cigarette. The liquid contains propylene glycol and/or vegetable glycerine, food grade flavourings and nicotine (although as noted above some liquids are nicotine free).

4. While vaping products do not contain tobacco, which produces tar and carbon monoxide – two of the most harmful constituents in tobacco smoke – they do contain some of the harmful chemicals and toxicants found in combustible cigarettes. These include heavy metals like nickel and lead.

5. In addition, the flavourings used in liquids are certified as being safe for ingesting, not inhaling, and the products have not been in use long enough to know for sure about any long-term cumulative harms that could develop from their inhalation.^{5,6,7} It is for this reason that vapes should be seen as a method for stopping smoking rather than a lifestyle product.

Are vapes harmful?

6. The World Health Organization believes that vaping devices are “undoubtedly harmful” to health and should be “strictly regulated”.⁸ Stating that “the evidence is clear that the aerosols of the majority of [vape products] contain toxic chemicals, including nicotine and substances that can cause cancer.” Their use is “associated with increased risk of cardiovascular diseases and lung disorders” along with “adverse effects on the development of the foetus during pregnancy.”

7. The regulation of vapes around the world varies. Several countries – including India and Singapore – have banned the use of vape products on public health grounds due, in part, to their attractiveness to young people. From October 2021, it became illegal to purchase nicotine-containing vaping products without a doctor’s prescription in Australia.

8. In July 2020, the UK Committee on Toxicity of Chemicals in Food, Consumer Products and the Environment published a paper on the potential toxicological risks from e-cigarettes⁹. It found no immediate risks to health from exposure to the glycerol and propylene glycol used in vape liquid. However, it did emphasise that “the long-term effects from repeated exposures are unknown.”

9. Menthol, vanillin, cinnamaldehyde and menthone are four common flavourings used in e-liquids, but these are certified as safe for ingestion and not inhalation. The Committee highlighted the inhalation of flavouring ingredients as an area of particular uncertainty due to a lack of knowledge about their potential toxicity when inhaled. Gaps in information and the lack of available evidence on the risks related to vaping made it impossible to fully assess the risks.

⁵ [Is vaping safe? | The truth about vaping | Patient](#)

⁶ [OVXREQw5R3yfWC733D7B \(pathlms.com\)](#)

⁷ [Tracking the supply and sale of e-cigarettes to smokers \(2017\) RSPH](#)

⁸ [E-cigarettes are harmful to health \(who.int\)](#)

⁹ [COT E\(N\)NDS statement \(food.gov.uk\)](#)

10. At this point there is limited evidence on the long-term harms vaping could cause due to the relatively short period of time that products have been available. The clinical impacts of long-term use could take decades to manifest. In addition, there are mixed views among academics, health professionals and scientists about the amount of harm these products could pose to human health¹⁰. However, evidence does exist to suggest that the long-term use of these products could cause potentially life-threatening illnesses such as COPD¹¹.

11. In addition to the potential harms caused by the chemicals in vaping products, most of those products contain nicotine, the harms caused by which are well documented. Nicotine is neuroactive and can negatively impact cognitive brain development. The human brain development continues until around the age of 25 years, making young people particularly vulnerable to the harms of nicotine. Nicotine also has a negative impact on those suffering from psychiatric disorders, rendering medications less effective, leading to the prescription of higher dosages and increasing the possibility of negative side-effects.

12. Nicotine is highly addictive and the costs associated with smoking or vaping are not insignificant. The Royal College of Physicians' 2000 report on nicotine addiction described nicotine as being as addictive as heroin.¹² It is this addictiveness that means that it is difficult for people who smoke cigarettes to quit, and in line with our precautionary approach we do not want current non-smokers or young people becoming addicted to nicotine via vapes when the long term effects of use of vaping products are unclear.

13. Young people are particularly vulnerable to nicotine addiction and more likely to take health risks and discount the future consequences of their behaviours.

14. With limited evidence on the long-term impact to human health caused by the chemicals and interactions of substances contained in vaping products, but with good evidence of the harms of nicotine, it is prudent to take a precautionary approach to the use of vaping products. In particular, we want to protect young people and prevent them from becoming addicted to vaping products. One way to do this is by reducing the visibility of vaping products through tighter restrictions on advertising and promotion.

Using vapes to quit smoking

15. Despite tobacco's long history of use, the link between smoking and lung cancer was not clearly made until the early 1960s. Evidence now shows that smoking is linked to a range of cancers and health conditions. While the impact on each individual smokers varies, the longer someone smokes the higher the risk.

¹⁰ [Randomized Clinical Trial Examining the Effects of Instructions for Electronic Cigarette Use on Smoking-Related Behaviors and Biomarkers of Exposure | Nicotine & Tobacco Research | Oxford Academic \(oup.com\)](#)

¹¹ [Original article: Chronic electronic cigarette exposure in mice induces features of COPD in a nicotine-dependent manner \(nih.gov\)](#)

¹² [Nicotine addiction in Britain – RCP London](#)

16. On average, if someone starts to smoke at a young age, the risks increase later in life with signs of health damage beginning around the age of 40 and beyond – 20 or more years after starting smoking tobacco.

17. The time-lag between taking up tobacco smoking and the development of disease is a cause for concern. Smoking kills and even smoking one cigarette a day has been shown to increase an individual's risk of developing coronary heart disease and stroke¹³.

18. In November 2017, the British Medical Association's Board of Science published a position paper which aimed to balance the risks and opportunities associated with the use of vapes¹⁴. While acknowledging that the inhalation of chemicals in vapour is not risk-free and long-term scientific evidence is required to fully understand impact, the BMA position paper summarised that while some of the harmful chemicals found in tobacco smoke were also found in aerosol from vapes, they were at much lower levels. People who switched from smoking tobacco cigarettes had significantly lower levels of the harmful chemicals in their bodies.

19. Latest advice suggests that vaping is likely to be less harmful than tobacco products, which, when smoked, contain over 5,000 chemicals. The Royal College of Physicians believes that "the hazard to health arising from long-term vapour inhalation from the e-cigarettes available today is unlikely to exceed 5% of the harm from smoking tobacco."¹⁵ Whilst the College promotes the use of e-cigarettes as a safer alternative to smoked tobacco, we do not consider that degree of harm acceptable to young people or adult non-smokers.

20. Cochrane, in 2020, reviewed the effectiveness of electronic cigarettes as smoking cessation aids concluding success rates to be twice that of Nicotine Replacement Therapies.¹⁶

21. However, dual use – smoking combustible cigarettes and using vaping products – is not believed to reduce the risk of adverse health effects associated with smoking tobacco products and may even increase the overall risks from nicotine exposure.¹⁷ It is important that individuals wishing to quit smoking tobacco products be able to access information and advice on cessation approaches, which include vaping.

22. The Scottish consensus statement on e-cigarettes was created by NHS Health Scotland in 2017 in collaboration with public health experts including the Royal College of Physicians, Health Boards, ASH Scotland and various academics. It reached agreement that, based on current evidence, vaping is less harmful than smoking tobacco¹⁸. It states:

¹³ [Low cigarette consumption and risk of coronary heart disease and stroke: meta-analysis of 141 cohort studies in 55 study reports | The BMJ](#)

¹⁴ *E-cigarettes: balancing risks and opportunities*, BMA, November 2017 bma.org.uk

¹⁵ [Nicotine without smoke: Tobacco harm reduction | RCP London](#)

¹⁶ [Updated Cochrane Review shows electronic cigarettes can help people quit smoking | Cochrane](#)

¹⁷ [COT E\(N\)NDS statement \(food.gov.uk\)](#)

¹⁸ [Consensus statement on e-cigarettes \(healthscotland.scot\)](#)

“Although most e-cigarettes contain nicotine, which is addictive, vaping carries less risk than smoking tobacco. Thus, it would be a good thing if smokers used them instead of tobacco”.

“Using e-cigarettes without stopping smoking (dual use) does not provide health benefits. Anyone who is using both should be strongly encouraged to stop smoking tobacco as soon as they can”.

“To be absolutely clear, e-cigarettes are useful for public health and health service purposes only as a potential route towards stopping smoking. Access to e-cigarettes needs to be controlled carefully; they are not products for children or non-smokers.”

23. Stopping smoking can have one of the largest impacts on improving someone’s health and vaping products have become a popular tool among those trying to stop or cut down tobacco use.

24. The Scottish Government recommend a variety of nicotine replacement therapy techniques and aids, of which vapes are just one tool.

25. The Medicines and Healthcare products Regulatory Agency (MHRA) published guidance in October 2021 for medicinally licensed e-cigarette products to be prescribed in England to help people quit tobacco¹⁹. No decision has been made as yet by the UK Government on whether this approach will be taken forward.

Current controls on vaping products

26. The Tobacco and Related Products Regulations 2016 (TRPR 2016) brought in a number of requirements including restricting the capacity of tanks to 2ml, the volume of nicotine in containers to 10ml, the strength of nicotine in liquids to no more than 20mg/ml and banning certain ingredients including vitamins, colourings, caffeine and taurine²⁰.

27. Packaging must be child-resistant and contain health warnings. All devices and liquids must be notified to the Medicines and Healthcare Products Regulatory Agency before they can be sold²¹. In addition, restrictions were introduced around the marketing and promotion of vaping products.

28. The amended “TRPR 2016” regulation bans²²:

- the advertising of electronic cigarettes in newspapers, magazines or periodicals;
- advertising electronic cigarettes in information society services – such as the internet;

¹⁹ [Guidance for licensing electronic cigarettes and other inhaled nicotine-containing products as medicines - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/licensing-electronic-cigarettes-and-other-inhaled-nicotine-containing-products-as-medicines)

²⁰ [The Tobacco and Related Products Regulations 2016 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uksi/2016/1708/contents/matter)

²¹ [E-cigarettes: regulations for consumer products - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/e-cigarettes-regulations-for-consumer-products)

²² [The Tobacco Products and Nicotine Inhaling Products \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uksi/2016/1708/contents/matter)

- sponsorship of events;
- product placement on television; and
- advertising electronic cigarettes on on-demand services.

Proposed additional controls

29. We believe that these restrictions do not go far enough to protect young people and non-smokers from influential messaging. Use of vaping devices among young people in particular has increased in recent years despite the existing restrictions set out above. Those restriction do not cover all forms of advertising or promotional activity here in Scotland. Adverts on bus stops, vehicles, billboards, brochures and leaflets, offering free samples and sponsorship are still permitted. Advertising and promotional activities are a powerful and influential tool used by businesses to promote these products to consumers. Advertising and promotional activities expose people to vaping products in many different aspects of life, from standing at the bus stop to watching sports on TV. This gives advertising and promotional activities a very broad reach and they can be very influential.

30. Whilst evidence of the long term health impacts of vape products is still limited, we wish to do what is in our power to protect young people and non-smokers from using these products and from becoming addicted to them. We aim to bring in additional restrictions that will capture those elements of advertising and promotion in Scotland which are not covered by existing legislation to ensure that vapes are seen as a method to stop smoking and not as a lifestyle accessory.

31. We proposed that further Scotland-wide bans should be introduced around:

- advertising and brand-sharing;
- free distribution and nominal pricing; and
- sponsorship.

32. The proposed additional restrictions are discussed throughout this consultation paper.

Basis of the proposed regulations and what is covered

33. The Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 (“the 2016 Act”) gives the Scottish Ministers powers to make secondary legislation (“Regulations”) to restrict advertising and promotion of vaping products, including e-cigarettes in Scotland²³. This means that the Scottish Ministers can introduce further restrictions on advertising and promoting these products.

34. A full public consultation for the Act took place in 2015 and identified substantial support for appropriate regulation of vape products²⁴. Approximately two thirds of those who responded to the 2015 consultation supported Ministers taking action beyond the existing restrictions on advertising and promoting vape products to protect young people and adult non-smokers from any form of advertising or

²³ [The Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act 2016.](#)

²⁴ [Consultation on Electronic Cigarettes and Strengthening Tobacco Control](#)

promotion in Scotland. Sixty two percent supported introducing further restrictions on advertising and promoting vapes in Scotland and 70% agreed there should be exceptions – the most frequent reason given that advertising should be targeted towards current smokers.

35. The 2019 Scottish Health Survey found that e-cigarettes use among adults has remained relatively stable at seven percent since 2015. It also found that 20% of adults reported having ever used these products, with men and young adults more likely to have used one²⁵. Despite the fact that the number of smokers in Scotland has been reducing over time, the number of adults who vape regularly has been consistent since 2015. However, The Scottish Schools Adolescent Lifestyle and Substance Use Survey (SALSUS) 2018 showed that vape use by young people has increased since 2015. The number of 13 year old non-smokers who have tried vapes increased from 13% to 15%, and for 15 year olds who are non-smokers it rose from 24% to 28%.

36. As it is currently understood that using vape products is less harmful than smoking tobacco, we recognise the benefits in these products as a cessation tool. We would like to ensure that smokers are able to access a range of accessible and understandable information about vapes to inform them about the potential benefits of these products as an aid to stopping smoking. This will help counter significant levels of misinformation and misunderstanding about the respective risks of smoking and vaping²⁶. At the same time, we are concerned that adult non-smokers, young people and children would be exposed to some known and some unknown harms from the chemicals in vaping products if they were to use them as a lifestyle accessory. We do not want these groups of people to be encouraged to start using vaping products.

37. We therefore propose further restrictions on advertising and promotions of vaping products in Scotland, including restrictions on advertising on billboards, bus stops, vehicles, posters, leaflets, banners and certain published material (e.g. brochures and booklets), product displays whose purpose or effect is to promote vaping products and certain audio-visual media (e.g. publically exhibited moving-picture advertisements).

38. In addition we propose to introduce restrictions on brand-sharing in products and services, free distribution and nominal pricing, and sponsorship of activities, events or people in Scotland.

39. We would introduce these proposed restrictions through Regulations made under the 2016 Act. The Regulations could also introduce offences and penalties, with statutory exceptions and defences, and make provision about the function of enforcement officers.

40. The proposed restrictions already apply to tobacco products. We propose to include in the Regulations the same maximum penalties for contraventions of the proposed restrictions on vaping products as those in place for contraventions of

²⁵ [Scottish Health Survey - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/scottish-health-survey-2019/pages/100-109.aspx)

²⁶ [Vaping in England: 2021 evidence update summary](#)

equivalent tobacco restrictions, as we consider that those penalties are dissuasive yet proportionate. The penalties for tobacco restrictions are contained in the 2002 Tobacco Advertising and Promotion Act 2002 (“the 2002 Act”)²⁷.

41. For enforcement provisions, we propose to give local authority enforcement officers the same powers as those afforded to them under the Tobacco and Primary Medical Services (Scotland) Act 2010 (“the 2010 Act”), and to make it an offence to obstruct or fail to comply with an order from an enforcement officer.²⁸

Who will be affected?

42. The Regulations would affect wholesalers, large and small retailers, advertising and promotion companies, producers of vape products, organisations and businesses who have entered into or could enter into sponsorship agreements and designated officers of local authorities. These proposals will have a direct impact on the 4,912 outlets currently registered to sell both tobacco and vape products and the 1,351 specialist vape retailers on the Register of Tobacco and Nicotine Vapour Product Retailers and would only apply to activities carried out in the course of a business.²⁹

43. There will be no impact on non-business information. Non-commercial, unbranded information (such as public health information) on vape products would be permitted. We are **not** proposing that there should be a display ban or that products should only be made available in standardised packaging. In line with our approach that these products should be used as a smoking cessation aid, we would look to minimise the impact of the proposed Regulations on people who are using vapes as a smoking cessation aid.

Declaration of direct or indirect links to the tobacco industry

44. The questions being posed by this consultation progress over the following pages. As the Scottish Government is a Party to the World Health Organisation’s Framework Convention on Tobacco Control (FCTC) we have an obligation to protect the development of public health policy from the vested interests of the tobacco industry.³⁰

45. To meet this obligation, we ask all respondents to disclose whether they have any direct or indirect links to, or receive funding from, the tobacco industry.

46. Careful consideration will be given to all consultation responses including those from the tobacco industry and from those with links to the tobacco industry. These views will also be included in the published summary of consultation responses.

Declaration

²⁷ [The Tobacco Advertising and Promotion Act 2002](#)

²⁸ [Tobacco and Primary Medical Services \(Scotland\) Act 2010](#)

²⁹ [Register of Tobacco and Nicotine Vapour Product Retailers - STRR \(tobaccoregisterscotland.org\)](#)

³⁰ [WHO | WHO Framework Convention on Tobacco Control](#)

Please indicate any direct or indirect links to the tobacco industry			
No links	Direct	Indirect	Don't know
If you have links to the tobacco industry, please explain what those are below.			

Proposed additional restrictions on advertising and promotion

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

Question 1	Do you agree that we should be seeking to limit use of these products as a cessation aid and restrict exposure to non-smokers?					
Please tick one	Yes		No		Don't Know	
If you have any comments on the overall approach please record those here.						

48. 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. However, we accept that as evidence develops vape products may prove to be safer than anticipated. For that reason all evidence around the use of and impact from these products is kept under constant review.

49. Should the current health fears around prolonged use of vaping products not materialise, we propose to review, and potentially lift, restrictions around their advertising and promotion.

50. 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. We therefore 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.

Question 2	Do you agree with proposal to extend restrictions on advertising these products in the ways described above?					
Please tick one	Yes		No		Don't Know	
If you have any comments on the overall approach please record those here.						

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

Question 3	Do you agree with proposal that in-store promotional displays should be banned?					
Please tick one	Yes		No		Don't Know	
If you have any comments on the overall approach please record those here.						

Brand-sharing in products and services

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

53. 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. We wish to mirror this to ensure brand-sharing does not become an alternative means to promote uptake of vaping products.

54. 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. For example, a vaping product would be prohibited from carrying names, logos or recognisable characteristics from a financial services company, sports association, confectioner etc. and only the vape product company branding would be permitted on the vape product.

Question 4	Do you support the proposal to make brand-sharing an offence?					
Please tick one	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Don't Know	<input type="checkbox"/>
If you have any comments on this restriction please record those here						

Free Distribution and Nominal Pricing

55. The 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.

56. 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.

57. 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.

58. 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.

59. 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.

Question 5 a.	Do you support the proposal to make free distribution of vaping products an offence?					
Please tick one	Yes		No		Don't Know	
If you have any comments on restricting free distribution please record those here.						

Question 5 b.	Do you support the proposal that nominal pricing of vaping products should be an offence?					
Please tick one	Yes		No		Don't Know	
If you have any comments on restricting nominal pricing please record those here.						

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Sponsorship of an activity, event or person

60. 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.

61. Vaping companies have, as their tobacco counterparts did in the UK previously, already entered sponsorship agreements with premium sporting clubs and activities.³¹

62. We 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.

Question 6	Do you support the proposal to make sponsorship agreements in respect of vaping products an offence?					
Please tick one	Yes		No		Don't Know	
If you have any comments on this proposed restriction please record those here.						

Trade-only events

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

³¹ [VPZ – Official Rangers FC Sponsor | VPZ | Vape E-Liquids, Kits and Coils; Indy 500 Represents Rare Sports Marketing Opportunity for Vaping Brands - Morning Consult](#)

Question 7	Do you support the proposal to introduce exemptions to allow advertising at trade-only events?					
Please tick one	Yes		No		Don't Know	
If you have any comments on whether or not advertising should be permitted at such events please record those here.						

Fines and Penalties

64. 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. Due to the nature of restrictions we feel this is an appropriate level for penalties.

65. We 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. We 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.³²

66. 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.

³² [Tobacco Advertising and Promotion Act 2002 \(legislation.gov.uk\)](http://legislation.gov.uk)

Defences

67. The defences to the offences would also mirror those laid out in the 2002 Act for tobacco advertising and promotion. This would mean:

- (1) 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;
- (2) 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;
- (3) 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;
- (4) 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;
- (5) 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.

Enforcement

68. 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.³³

69. 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.

70. 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.

³³ [Tobacco and Primary Medical Services \(Scotland\) Act 2010 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2010/16/section/1)

Question 8 a.	Do you support the proposal that fines and penalties should mirror those already in place for tobacco products?					
Please tick one	Yes		No		Don't Know	
If you have any comments on this proposal please record those here.						

Question 8 b.	Do you support the proposal that defences should be as laid out as above?					
Please tick one	Yes		No		Don't Know	
If you have any comments on this proposal please record those here.						

Question 8 c.	Do you support the proposal that officers of local authorities should be responsible for enforcement?					
Please tick one	Yes		No		Don't Know	
If you have any comments on this						

proposal please record those here.	
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Impact Assessment

71. We are committed to equality and ensuring that our policies lead to the creation of a fairer Scotland. To help us do so, we welcome your views on the following questions.

72. What impacts, if any, do you think 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? Please consider both potentially positive and negative impacts and provide evidence where available. Comment on each characteristic individually.

Question 9 a			
Please indicate the impact the proposed policy would have on individuals.			
No impacts	Positive impact	Negative impact	Don't know
Please explain further why you believe the proposed policy would impact on people in the way described above:			

73. What impacts, if any, do you think the proposed policy would have on people living with socio-economic disadvantage? Please consider both potentially positive and negative impacts and provide evidence where available.

Question 9 b			
Please indicate your view on the impact of the proposed policy on people living with socio-economic disadvantage?			
No impacts	Positive impact	Negative impact	Don't know

Please explain further:

74. Please use this space to identify other communities or population groups who you consider may be impacted by this policy proposal. Please consider both potentially positive and negative impacts and provide evidence where available.

Question 9 c

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

No impacts

Positive impact

Negative impact

Don't know

Please explain further:

Further comments

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

Question 10

Further comments

Please outline here:

Summary of consultation questions

Do you support the proposal:

1. that vaping products should be used only as a cessation aid and exposure should be reduced for non-smokers (Q1);
2. to extend restrictions on advertising these products in the ways described (Q2);
3. with proposal that in-store promotional displays should be banned (Q3);
4. to make brand-sharing an offence (Q4);
5. to make free distribution of vaping products an offence (Q5a);
6. that nominal pricing of vaping products should be an offence (Q5b);
7. to make sponsorship agreements in respect of vaping products an offence (Q6);
8. to introduce exemptions to allow advertising at trade-only events (Q7);
9. that fines and penalties should mirror those already in place for tobacco products (Q8a);
10. that defences should be as laid out as stated (Q8b); and
11. that officers of local authorities should be responsible for enforcement (Q8c).

We also ask you to indicate:

1. the impact the proposed policy would have on individuals (Q9a);
2. your view on the impact of the proposed policy on people living with socio-economic disadvantage (Q9b); and
3. identify communities or groups who may be impacted by these proposals (Q9c).

Finally, at Question 10, we offer you an opportunity to comment further on the proposals.

Responding to this consultation

We are inviting responses to this consultation by April 28, 2022.

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space ([Scottish Government consultations](#)).

You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of April 28, 2022.

Alternatively, you can e-mail your response to: tobaccocontrolteam@gov.scot.

If you are unable to respond online, please complete the Respondent Information Form (see “Handling your Response” below) and send it to:

The Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016

Consultation on Regulating Domestic Advertising and Promotion of Nicotine Vapour Products in Scotland

Tobacco Control Team
Scottish Government
St Andrews House, 3E
Regent Road
Edinburgh
EH1 3DG

Handling your response

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published we will regard it as confidential and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any requests made to it under the Act for information relating to responses made to this consultation.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

To find out how we handle your personal data, please see our privacy policy – [Privacy – gov.scot \(www.gov.scot\)](http://www.gov.scot).

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above.

Scottish Government consultation process

Consultation is an essential part of the policy-making process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.gov.scot> . Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.



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