



UK Vaping Industry Association

Clare Haughey MSP
Convener
Health, Social Care and Sport Committee
The Scottish Parliament
Edinburgh
EH99 1SP

9 December 2024

Dear Clare,

Re: UK Vaping Industry Association Response to 'Tobacco and Vapes Bill Legislative Consent Memorandum (LCM): Request for further information'

On behalf of the UK Vaping Industry Association (UKVIA), the UK's largest vaping trade association, thank you for the opportunity to provide information to your committee on the Tobacco and Vapes Bill, and to provide a recommendation as to whether the Scottish Parliament should provide pass a legislative consent motion (LCM). In summary, while the UKVIA has concerns with the proposed legislation, further regulation and government intervention is needed to remove bad actors from the vaping industry and eliminate underage consumption. As such, it is our recommendation that the Scottish Parliament approves any resulting LCM.

Areas of the Tobacco and Vapes Bill that the UKVIA supports

There is no question that underage vaping is a significant issue in the UK, and that both the UK and Scottish Governments have a greater role to play in addressing the issue. It is because of this that the UKVIA has long been calling for the introduction of a retailer and distributor licensing scheme and for increased 'on-the-spot' fines of £10,000 for those found to be selling products to children. The vaping black market is also considerable with some estimating that half of all vaping products sold in the UK being illegal due to packaging, tank sizes, or materials. To provide a high-level overview, the key parts of the Tobacco and Vapes Bill that we are supportive of are:

- The introduction of a retailer licensing scheme for the vaping sector, ensuring that illegal vapes can not be sold on our streets and eliminating rogue retailers.
- The ability for the Health Secretary to introduce regulations on product displays, retail packaging, and flavours.
- The ability for the Health Secretary to introduce a register of vaping products and information relating to individual products.
- The requirement for the Health Secretary to consult prior to implementing any regulations.

These measures will help address the increase in underage vaping and ensure that rogue retailers are removed from the retail landscape through the revocation of their license. Flavour names and product packaging should also be subject to additional regulations as the industry has long called for. Ensuring that vapes such as 'unicorn ice' and products containing images of child appealing cartoons are not able to be sold.

Areas of the Tobacco and Vapes Bill where the UKVIA has concerns

The UKVIA does have a number of concerns about the Tobacco and Vapes Bill, and we would encourage the Scottish Government and Parliament to consider these prior to granting the LCM. To provide a high-level summary these are:

- That a licensing scheme is used to limit the number of premises in an area that can sell vaping or non-combustible nicotine products.
- That the prohibition of advertising on 'internet services' will remove the ability of online vaping retailers to effectively operate or provide critical information about products prior to sale.
- The requirement for the Health Secretary to only consult persons that they consider it appropriate to consult, rather than those who appear representative of the interests concerned and relevant parties including industry.
- The omission of specialist vaping stores from the exclusion on advertising restrictions, as granted to specialist tobacconists. Despite the key role these stores play in supporting smokers to quit.
- That government seeks to overregulate the industry through draconian regulations. While there are bad actors who deliberately advertise their products to children which must be stopped, we also must ensure that we are not removing the very things that make vapes such an effective stop-smoking tool.

Please find below an outline of our concerns in more detail.

Potential Restrictions due to Licensing Scheme

The UKVIA has long supported the introduction of a vaping licensing scheme and is pleased the government has decided to proceed. It is currently legal for vapes to be sold from locations such as the backs of taxis, toy stores, and confectioners. This practice must stop.

However, there are many places where selling vapes is entirely legitimate, including corner shops, supermarkets, and specialist vape stores. A licensing scheme must be designed to allow these premises to continue selling products without restricting the number of licenses available in a given area. Under Schedule One of the Bill, a license could theoretically be refused based on location. For example, a local authority could impose caps on the number of stores allowed to sell vapes in a town centre.

Such restrictions would be draconian and could limit accessibility for smokers looking to quit. Additionally, they may harm the UK's convenience store sector, which relies heavily on vape and tobacco sales.

Recommendation: We urge parliamentarians to ensure that a licensing scheme is implemented to promote responsible retailing without unnecessarily restricting market access for reputable businesses.

Prohibition of Advertising on Internet Services

The UKVIA recognises the importance of regulating advertising to protect children and young people from exposure to vaping products. However, the proposed prohibition on advertising on 'internet services' is overly restrictive and could have unintended consequences for the vaping industry and smokers seeking alternatives to cigarettes.

Online platforms are a crucial means for legitimate retailers to provide essential information about vaping products, including their role as effective stop-smoking aids. Banning all online advertising would severely hinder businesses' ability to market responsibly and limit adult smokers' ability to access safer alternatives. This is especially concerning for small and independent vaping businesses, which rely heavily on e-commerce. Online advertisements are also incredibly powerful at targeting existing smokers as well, rather than physical premises which are open to the general public.

Furthermore, such a ban risks driving consumers to unregulated markets, where unsafe or illegal products are more likely to be sold.

Recommendation: Amend the Bill to permit factual and responsible advertising of vaping products on internet platforms, with robust age-verification measures to prevent underage exposure.

Specialist Vaping Stores and Advertising Exemptions

The Tobacco and Vapes Bill proposes exemptions from advertising restrictions for specialist tobacconists but fails to extend the same consideration to specialist vaping stores. This omission undermines the critical role these stores play in helping smokers transition to safer alternatives.

Specialist vaping stores provide tailored advice, education, and support to smokers seeking to quit. Restricting their ability to advertise to adult smokers within their premises diminishes their capacity to fulfil this vital public health function. Unlike general retailers, these stores cater almost exclusively to adult smokers and vapers making them a unique and trusted environment for providing information about products and cessation strategies.

Failing to grant these stores similar advertising freedoms to specialist tobacconists creates an uneven playing field and risks marginalising a key resource in the fight against smoking.

Recommendation: Extend advertising exemptions granted to specialist tobacconists to include specialist vaping stores, enabling them to educate adult smokers as to the benefits of switching to vaping and to promote their products responsibly to adult smokers and vapers.



UK Vaping Industry Association

Consultation Process

The UKVIA welcomes the inclusion of a requirement for both the Secretary of State and Scottish Ministers to consult before implementing new regulations. However, the current language of the Bill, which states that consultation only needs to include persons “they consider it appropriate to consult,” raises concerns about the transparency and inclusiveness of the process.

To ensure regulations are both effective and practical, it is essential that all relevant stakeholders, including industry representatives, public health experts, and consumer groups, are consulted. Excluding key voices could result in overly restrictive or poorly informed policies that fail to achieve their intended outcomes.

While it may seem like common sense that industry and consumer groups would be consulted, unfortunately under previous governments this has not been the case, leading to many of the challenges presented by the illegal vaping industry today.

Over-Regulation and Its Impact on Smoking Cessation

While the UKVIA supports robust measures to prevent underage access to vaping products, the Bill risks over-regulating the industry in ways that could undermine the power of vapes as a smoking cessation tool. Provision such as overly restrictive flavour regulations or excessive controls on product design could make vaping less appealing to adult smokers seeking safer alternatives to cigarettes.

Flavours, for example, are a key factor in helping smokers successfully transition to vaping. According to data from Stop Smoking Services across the country, almost 70% of smokers record fruit options, as or amongst, their most popular choice. Supporting thousands of smokers to quit. Over-regulation in this area could discourage smokers from making the switch, potentially driving them back to combustible tobacco products.

Recommendation: Ensure that regulations focus on targeting bad actors who market to children while preserving the features of vaping products, such as flavours, that make them an effective cessation tool for adult smokers.

Vaping Vending Machines for Stop Smoking Services

While we understand that vaping vending machines should be banned from inappropriate locations, for age-gated premises, or at least age-gated healthcare environments such as hospitals and mental health trusts, vending machines can be the only way that vaping products can be offered to smokers who need to switch to a less-harmful alternative.

Recommendation: That age-gated premises and age-gated healthcare environments be exempted from the prohibition of vaping vending machines.



UK Vaping Industry Association

Conclusion

The UKVIA strongly supports the Scottish Parliament's efforts to address underage vaping and improve the regulation of vaping products through the Tobacco and Vapes Bill. While we welcome key provisions such as the introduction of a retailer licensing scheme and enhanced regulations on packaging and advertising, we urge Parliament to carefully consider and address the outlined concerns to avoid unintended consequences that could undermine the positive public health impact of vaping as a smoking cessation tool.

It is essential that this legislation strikes a balance between protecting young people and preserving access to safer alternatives for adult smokers. Measures such as inclusive consultation, allowing responsible online advertising, maintaining accessibility for legitimate retailers, and preserving the role of specialist vaping stores are crucial to achieving this balance. Furthermore, ensuring regulations target bad actors without overburdening the industry will ensure continued innovation and effectiveness in supporting smokers to quit.

The UKVIA remains committed to working collaboratively with policymakers to develop a framework that both addresses the concerns surrounding underage vaping and strengthens vaping's role as a critical public health tool. We recommend that the Scottish Parliament approve the legislative consent motion (LCM), with the hope that these recommendations will inform the ongoing development and implementation of the Bill.

Contact Information

We would welcome the opportunity to meet with you and discuss our briefing with you directly. Please get in touch at any time to:

John Dunne
Director-General
UK Vaping Industry Association
john@ukvia.co.uk