

ASH Scotland's views for the Net Zero, Energy and Transport Committee's consideration of the Environmental Protection (Single-use Vapes) (Scotland) Regulations 2024

About Action on Smoking and Health Scotland

ASH Scotland (Action on Smoking and Health Scotland) is a registered Scottish charity. We work in and for Scotland at national, UK and international levels, taking action to reduce the harms caused by tobacco and related products and working to achieve a tobacco-free generation by 2034.

We do not engage with nor take funding from the tobacco and related products industries or vested interests; and implement Article 5.3 of the World Health Organisation's Framework Convention on Tobacco Control (FCTC).

ASH Scotland's views – Environmental Protection (Single-use Vapes) (Scotland) Regulations 2024

ASH Scotland appreciates the invitation from the Convener of the Scottish Parliament's Net Zero, Energy and Transport Committee to share our views on the Environmental Protection (Single-use Vapes) (Scotland) Regulations 2024.

Please find, below, our responses to the questions posed in the Committee's letter dated 28 June 2024.

1. Do you agree that the supply and sale of single-use vapes in Scotland should be banned? If not, do you favour an alternative approach?

ASH Scotland agrees that the supply and sale of single-use vapes in Scotland should be banned. We, along with the Royal College of Paediatrics and Child Health (RCPCH) and Royal College of Physicians of Edinburgh (RCPE), for have been calling for the ban of disposable e-cigarettes on both health and environmental grounds.

In addition to the progress being made towards respective bans of these health and environmental harming recreational products in England and Wales, a similar ban has been approved in Belgium and will come into force on 1 January 2025. France is seeking approval from the EU Commission to introduce a ban from the end of 2024, and a consultation is also being held in Ireland. Ongoing discussions are continuing about introducing an EU-wide ban. Further afield, Australia banned the importation of disposable e-cigarettes since January 2024 and New Zealand also committed to a ban in March 2024.

As of December 2023, the World Health Organization (WHO) stated that 34 countries had banned all e-cigarettes, including disposable single-use products. Australia has banned the sale of all e-cigarettes outside of pharmacies in new regulations that came into force in July 2024. The government recently appointed an Illicit Tobacco and E-cigarette Commissioner, a new role that is tasked with the responsibility of curbing black market sales of vapes through law enforcement, intelligence and health agencies joining together to conduct targeted and coordinated action to disrupt the business model of key distributors and actors within the illicit vaping market. Similar coordinated action by relevant agencies in Scotland and across the UK is desirable to ensure the ultimate success of the ban of single-use vapes.

The estimated cost of recycling single-use vapes, across the UK is £200 million every year and, based on population share, this would be an estimated £16 million in Scotland, not taking into account costs associated with the environmental damage these products may cause.

As the Scottish Government's Strategic Environmental Assessment indicated, single-use vapes are notoriously difficult and expensive to recycle. The only recycling process available in the UK is manual dismantling which is costly and time consuming as most single-use vapes are not designed to be taken apart easily. They are designed as one unit and require specific tools to remove the lithium-ion battery for recycling and careful handling of components to avoid exposure to the remaining e-liquid. Of the single-use vapes that are returned to a shop or recycling centre across the UK, it is estimated that only 1% are actually recycled due to limited recycling capacity.

WHO has called on governments to take urgent regulatory actions to protect children from harms caused by vaping, following mounting evidence of adverse health impacts, and studies consistently showing that young people who use e-cigarettes are up to three times at greater risk of starting to smoke tobacco.¹ Australia National University's 'Electronic cigarettes and health outcomes: systematic review of global evidence' found conclusive evidence that the use of e-cigarettes can cause lung injury, burns, poisoning or lead to seizures.²

The emergence of disposable e-cigarettes in recent years has driven an upsurge in vaping by young people in Scotland.

Between the 2018 Scottish Schools Adolescent Lifestyle and Substance Use Survey (SALSUS) and the 2021/22 Health and Wellbeing Census:

Regular e-cigarette use (once a week or more)

15-year-olds (S4) tripled from 3% to 10%.

13-year-olds (S2) doubled from 2% to 4.3%.

The Health Behaviour in School-aged Children (HBSC) survey data, Scotland 2022 reported:

Current e-cigarette use (used in last 30 days)

15-year-olds: 25% (increased from 7% in 2018)

13-year-olds: 10%

11-year-olds: 3%

Ever use (used at least once)

15-year-olds: 36%

13-year-olds: 16%

11-year-olds: 4%

Most e-cigarettes contain nicotine, which can be highly addictive and many include toxic chemicals that have not been safety tested for inhalation and are likely to damage health over time – this is especially a concern for children and young people whose lungs are still growing. Leading respiratory paediatricians, Dr Kenneth Macleod, Professor Steve Turner, Dr Ross Langley and Dr Jonathan Coutts, urged the Scottish Government to take urgent regulatory action to halt 'what is a fast becoming a vaping epidemic in the adolescent population' and avoid 'sacrificing the lung health of the next generation'.³

No e-cigarette has been licensed to be a smoking cessation aid by the Medicines and Healthcare products Regulatory Agency (MHRA) or licensed anywhere in the world as a medicinal therapeutic product. If any vapes were licensed, this process would ensure they were used appropriately and were tested and monitored, effective and quality controlled, unlike the wide range of largely untested recreational devices currently on retail.

In July 2024, WHO's clinical treatment guideline for tobacco cessation for adults, based on the most robust evidence of efficacy, provides evidence-based recommendations including the use of behavioural support delivered in both clinical and community settings as well as digital, pharmacological and system-level tobacco cessation interventions. E-cigarettes, including disposable single-use products, are not included as current evidence is not strong enough to recommend as a population level cessation measure.⁴

ASH Scotland advocates that people aiming to give up smoking or vaping are advised to contact NHS24's Quit Your Way Scotland service (www.quityourway.scot) which offers free expert person-centred support, in line with Scotland's consensus position which does not actively recommend non-prescription products. According to the Scottish Health Survey, only 21 per cent of people who smoke reported using an e-cigarette to quit. Most people who are successful in quitting tobacco long-term did so on their own without using anything, and a quarter used patches or gum.

ASH Scotland encourages Committee members to disregard the messaging of corporate multinational tobacco industry influenced organisations in its consideration of these regulations where these stray beyond information needed to implement measures. The UK Vaping Industry Association (UKVIA) and the Scottish Grocers' Federation (SGF), have both publicly expressed negative views with regards to the proposed ban.

From when it was established in 2016 until September 2023, UKVIA's membership consisted of small independent e-cigarette manufactures and the four major tobacco companies: Japan Tobacco International (JTI), British American Tobacco (BAT), Philip Morris International (PMI) and Imperial Tobacco. It still retains tobacco industry linked members such as the part industry-owned JUUL, and the Scottish Grocers' Federation. SGF lists Japan Tobacco International (JTI); Philip Morris International (PMI); British American Tobacco (BAT) and Imperial Brands as corporate members, as well as tobacco industry owned e-cigarette brands.

The Tobacco Tactics website, published by the Tobacco Control Research Group at the University of Bath, contains the following two entries for the UKVIA and the Scottish Grocers' Federation:
<https://tobaccotactics.org/article/uk-vaping-industry-association-ukvia/>
<https://tobaccotactics.org/article/scottish-grocers-federation/>

2. Coming into force on 1 April 2025, the regulations ban the supply of single-use vapes in Scotland. What do you think about the timescale for implementing this ban?

ASH Scotland's view is that the lead-in time is reasonably sufficient for retailers, manufacturers and suppliers to be fully aware, following the implementation of a Scottish Government communications strategy, of any actions they need to take to comply with the regulations when they come into force.

3. A "single-use vape" - is any vape that is not refillable or rechargeable. Do you agree with this definition and are there any potential loopholes or unintended consequences?

The definition of a single-use vape being any vape that is not refillable or rechargeable in itself is not a sufficient definition. ASH Scotland agrees with the definition which includes the need for the user of the product to change the coils and for the opportunity to change the coils, refill and recharge 'in the normal course of use'.

Consumables such as replacement coils, refill containers and pods containing a coil should be available in the same place where the e-cigarette devices associated with those consumables are sold. Vapes should be considered as single-use if the consumables are not displayed beside the devices. Regulation 4 should be amended accordingly.

Product development in recent months, which some commentators suggest are attempts to circumvent the proposed bans on disposable e-cigarettes, includes introducing the capability of allowing a 10ml e-liquid refill container to lock on to an e-cigarette. The legal maximum volume of e-liquid for an e-cigarette is 2ml but attaching a 10ml container may create a combined e-liquid volume of 12ml. Other new products are also now allowing two e-cigarettes to be connected by a magnet, or enabling multiple 2ml cartridges to be attached so that flavours can be 'swiveled'.⁵ The terminology in the single-use vapes ban regulations must be as flexible as possible to ensure emerging new products are captured.

ASH Scotland strongly suggests that the expert enforcement views by the Society of Chief Officers of Trading Standards Scotland (SCOTSS) are fully taken on board ahead of the regulations being implemented.

4. The regulations establish two main offences with associated penalties. Do you think these penalties are proportionate?

ASH Scotland views these penalties as being proportionate.

The provisions of the Tobacco and Primary Medical Services (Scotland) Act 2010, as amended, would provide appropriate wording for inclusion in the proposed criminal fixed penalty notices.

5. The enforcement powers granted to local authorities are extensive, allowing them to enter premises, take samples, and investigate suspected offences. What do you think of these powers both from the perspective of local authorities and businesses?

ASH Scotland agrees with the recommendations by trading standards partners that the wording of this regulation should reflect the terminology used in the Fireworks and Pyrotechnics Articles (Scotland) Act 2022 to ensure that “any such persons may accompany an Authorised Officer entering premises, and the officer may take into the premises such equipment and personnel as they think is necessary”. The powers available in Schedule 2 of the Fireworks and Pyrotechnics Articles (Scotland) Act 2002 should also be adopted to empower trading standards teams to conduct proactive inspections whereby an enforcement officer may ‘at any reasonable time, enter premises to which the public has access (whether or not the public has access at that time) and inspect any product on the premises which the public may inspect.’

ASH Scotland strongly suggests that the expert enforcement views by the Society of Chief Officers of Trading Standards Scotland (SCOTSS) are fully taken on board ahead of the regulations being implemented.

6. What do you think about the enforceability of the Regulations; potential key challenges in this area; and whether lessons can be drawn from any comparable areas, such as the single-use plastics ban.

ASH Scotland agrees with recommendations regarding enforcement of the regulations expressed by trading standards partners such as the introduction of a civil sanctions regime to avoid reliance on slow moving prosecutions in Scotland and provide quicker resolutions of minor offences as well as provisions for local authorities to apply for disposal orders to authorise the recycling of seized single-use vapes and reclaim disposal costs from the original seller.

The introduction of criminal fixed penalty notices and mechanisms for forfeiture and cost recovery through court orders should also be considered to strengthen enforcement. These provisions, which were included in the original draft regulations for Scotland published in March 2024 and currently retained in the Environmental Protection (Single-use Vapes) (England) Regulations 2024 and the Environmental Protection (Single-use Vapes) (Wales) Regulations 2024, should be reinstated.

ASH Scotland also agrees with the recommendation expressed by trading standards partners that a statutory duty for local authorities should be introduced to help deliver consistent enforcement throughout Scotland.

Another potential issue of concern is that the Medicines and Healthcare products Regulatory Agency (MHRA) currently has powers to register e-cigarettes to be legally sold under the Tobacco and Related Products Regulations (TRPR). Under the TRPR, ‘single-use vapes’ are considered legal. This appears to create a conflicting situation in which the MHRA can accept a product to be sold, or that existing products on the MHRA e-cigarette register can be sold legally but simultaneously be illegal under the regulations banning single-use vapes. The Scottish Government should review whether this is an issue and engage with the UK Government and the MHRA on how to resolve this conflict to ensure an outright ban on the sale and supply of disposable e-cigarettes can be implemented with full legal force in Scotland. ASH Scotland wants the MHRA to be empowered to remove products from the register.

ASH Scotland strongly suggests that the expert enforcement views by the Society of Chief Officers of Trading Standards Scotland (SCOTSS) are fully taken on board ahead of the regulations being implemented.

7. The policy objectives aim to reduce environmental harm and encourage reusable alternatives. Are these regulations sufficient to meet these objectives and are any supportive measures needed, for example, around communication, or uptake of reusable alternatives.

A communications strategy targeted at retailers selling e-cigarettes is needed to raise awareness of the consequences of not adhering to the ban on the sale and supply of disposable vapes as well as the need to register with the Scottish Government's Register of Tobacco and Nicotine Vapour Product Retailers, which is a legal requirement for all shops selling any e-cigarettes.

To increase recycling of non-disposable e-cigarettes which will still be available following the implementation of this ban, more must be done to ensure that retailers, including those online, adhere to their responsibilities, including the offer a take-back scheme, under Waste from Electrical and Electronic Equipment (WEEE) regulations. It is only since the high-profile emergence of the proposed bans of disposable e-cigarettes that the vaping industry has started to make claims that they are seeking to address the major issue of the immense volume of environmental waste and littering caused by their devices being discarded or placed in general waste facilities which poses a serious risk of fires through batteries exploding. Robust verifiable evidence regarding the number of e-cigarettes which are being collected and subsequently recycled, however, is difficult to obtain.

8. The Strategic Environmental Assessment says that the ban might result in an increased demand for illegally sold single-use vapes. What are the risks of increasing illegal sales of single-use vapes and how can those risks be mitigated?

As the illicit market of e-cigarettes is already substantial in Scotland and across the UK (estimated as around a third, whereas illicit tobacco is estimated at around ten per cent of market), we contend that the real issue is effective enforcement and coordination/conferring of the necessary powers to implement it. The proposed regulations cover retail and wholesale and, although an import ban is a reserved matter under the Scotland Act 1998, the Scottish Government should make representations to the UK Government to urge greater and more effective action to tackle the imported supply of disposable e-cigarettes into Scotland and elsewhere in the UK and publish data to help monitor this.

Border Force currently has no powers to seize goods, even if they suspect products to be illicit. The UK Government's forthcoming Vaping Products Duty, however, should present an opportunity to ensure that imported e-cigarettes have a greater chance of being checked to determine whether the products meet legal and regulatory requirements. The Chartered Trading Standards Institute estimates that around a third of all disposable e-cigarettes are non-compliant.

Resourcing trading standards teams with sufficient capacity across Scotland is also vital to ensure that the regulations can be fully and effectively enforced. Claims about a rise in illicit are a well-worn tobacco industry opposition argument to health measures however European research has demonstrated both that the prevalence of the illicit trade is consistently overstated by industry linked voices, and that enforcement is the key to reducing it independent of health measures. Banning the category of e-cigarettes most used by children and young people is a measure that can reduce supply and therefore reduce the demand for illicit.

9. Various impact assessments have been completed by the Scottish Government. The Committee would welcome views on the financial, business, environmental, and equality impacts identified or other comments on the impact assessments.

Please find, to follow, ASH Scotland's views in response to the Scottish Government's impact assessments.

Interim partial business and regulatory impact assessment

This impact assessment stated that the size of the disposable e-cigarette market has increased during the last few years. It is important to note that a significant proportion of the disposable vape market are young people and never-smokers.

Evidence suggests that a significant proportion of retailers are not following current regulations. A test purchasing report from 2022/23 by SCOTSS found that one in five (20%) underage e-cigarette test purchasing attempts resulted in a sale.⁶ This is roughly double the test purchase failure rate for underage tobacco test purchases. Data from the Scottish Government's Health and Wellbeing Census reported that 40% of 15-year-olds said they bought their e-cigarettes from shops, indicating that underage sales may be higher. A report by Chartered Trading Standards Institute found that one-third of all e-cigarettes used in the UK are illicit.⁷ Other sources suggest the illicit market is substantially higher.⁸

The impact assessment detailed the proportion of vapers using disposable e-cigarettes and it is important to place this in context. In the last few years, there has been an increase in young people and non-smokers taking up e-cigarettes. Data from ASH in England's Britain-wide youth and adult e-cigarette survey clearly shows that, among vapers, the use of pod and tank/mod devices has decreased as the use of disposable vapes increased.^{9,10} The proposed ban on disposable vapes could result in a large proportion of current disposable vapers switching to pod or tank/mod devices.

It is important to note that many e-cigarette retailers, importers and manufacturers have not been complying with current Waste from Electrical and Electronic Equipment (WEEE) and Battery regulations and evading the required contributions under these regulations,

Strategic Environmental Assessment - Environmental Report

ASH Scotland commended the accuracy and scope of the Strategic Environmental Assessment environmental baseline.

In 2022, at which point the environmental and public health concerns about a rise in youth vaping was emerging, only a fraction of retailers (as well as producers, manufacturers and importers) had the legally required measures in place under the WEEE and battery waste regulations to aid appropriate recycling and disposal of disposable e-cigarettes.

In Scotland in 2022, test purchasing data from Trading Standards showed that one in eight (20%) of retailers failed test purchasing tests.¹¹ Survey data from ASH's Britain-wide youth survey and the Scottish Government's Health and Wellbeing Census found that 40% of young people under 18 stated that they buy e-cigarettes from shops.¹² A report from the CTSI in 2022 estimated that one-third of all disposable e-cigarettes are illicit.¹³ Other reports indicate this could be substantially higher.¹⁴

Interim fairer Scotland duty assessment summary

People from low-income or low socioeconomic backgrounds are more likely to smoke, vape and dual use (Scottish Health Survey 2022 supplementary data). Some survey data, including the HBSC Scotland survey, ASH GB adult and youth vape survey and the Smoking Toolkit survey, suggest that the decline smoking prevalence has stalled during the last several years. There is no clear evidence that the increase in e-cigarette use has led to an increased decline in smoking among adults or children.

Given that disposable e-cigarettes are more expensive than a pod or refillable tank devices, this suggests that, for most people with low incomes, disposable vaping products result in an unnecessary higher expenditure. The emergence of disposable e-cigarettes drove an upsurge in vaping by young people and never smokers which can lead to nicotine addiction and a higher proportion of income being consistently spent on vapes or other nicotine products. Similarly for existing e-cigarette users and people who smoke and might switch, disposable e-cigarettes are more expensive than refillable and rechargeable e-cigarettes.

Interim stage 2 child rights and wellbeing impact assessment

ASH Scotland's view of the Child Rights and Wellbeing Impact Assessment (CRWIA) was that it was generally comprehensive and accurate.

We do, however, contend that there is strong evidence suggesting low levels of compliance with the restrictions of vape sales to young people who are under-age. A test purchasing report from 2022/23 by SCOTTS found that one in five (20%) underage test purchasing attempts of e-cigarettes resulted in a sale.¹ Data from the Health and Wellbeing Census reported that 40% of 15-year-olds said that they bought their e-cigarettes from shops. A report by Chartered Trading Standards Institute found that one-third of all e-cigarettes currently used in the UK are illicit.² Other sources suggest the illicit market is substantially higher.³

The impact assessment correctly noted that young people are generally conscious of the environmental issues regarding single-use vapes. ASH Scotland advocates that it is also essential to assess and understand how young people view the health risks associated with using disposable vapes, for themselves and their peers.

10. The Regulations have been introduced following a UK consultation. Other UK countries are expected to introduce similar regulations. Do you have any views or concerns about alignment or cross-border implications?

It is critical that the proposed ban from 1 April 2025 takes place is implemented in Scotland from 1 April 2025 as a vital immediate step towards protecting the environment and the health of children now and in future generations.

The former First Minister of Scotland, Humza Yousaf MSP, announced the Scottish Government's proposed ban on the sale and supply of disposable vapes in the Programme for Government statement on 5 September 2023, following the publication on 30 June 2023 of Zero Waste Scotland's '*Scoping policy options for Scotland focusing on understanding and managing the environmental impact of single use e-cigarettes*' review for the government.

The Scottish Parliament already possesses the appropriate powers to introduce the Environmental Protection (Single-use Vapes) (Scotland) Regulations 2024 and should support its implementation irrespective of whether other places in the UK have progressed to be in the position to introduce their country-specific regulations.

ASH in England's Britain-wide e-cigarette youth survey published in August 2024¹⁵ clearly shows children and young people are continuing to buy and use single-use vapes and an increasing proportion are becoming regular users of these health harming recreational vaping products.

The opportunity these measures present to protect and improve environmental health and the physical health of our young people should not be delayed to meet any potential demands from businesses which have had more than sufficient notice of the implementation date in Scotland.

Contact ASH Scotland

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- ⁸ Analysis of the Market for Vapes, Eunomia, 2023
- ⁹ Action on Smoking and Health (England) (2024) Use of vapes (e-cigarettes) among young people in Great Britain. <https://ash.org.uk/uploads/Use-of-vapes-among-young-people-in-Great-Britain-2024.pdf?v=1722505432>
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- ¹⁴ Analysis of the Market for Vapes, Eunomia, 2023
- ¹⁵ Action on Smoking and Health (England) (2024) Use of vapes (e-cigarettes) among young people in Great Britain. <https://ash.org.uk/uploads/Use-of-vapes-among-young-people-in-Great-Britain-2024.pdf?v=1722505432>