

**IBVTA submission to the Net Zero, Energy and Transport Committee**

**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?**

The IBVTA does not believe that the supply and sale of single-use vapes should be banned outright without further consideration of unintended negative consequences, and the likely effect on several specific minorities that might be affected by such a ban. We are also concerned that the proposed legislation appears (to a varying extent within UK Government and devolved administrations), to be addressing concerns in a policy area other than environmental. We have some doubts about the propriety and legal rigour of using legislative powers in this way.

To be specific, if the policy intent is in any part intended to reduce youth access to vapes, it must be noted that it is already illegal to sell vapes under the age of 18 under Section 91 of the Children and Families Act 2014 as amended by regulation 2 of Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations 2015. It seems entirely possible that additions to environmental regulations have to some extent become attractive due to a failure to enforce under these existing regulations.

An alternative approach to an outright ban would be either to tax, or to set a minimum price on vape devices, whether disposable or refillable. This would mean that the cost of using disposable vapes becomes even less financially viable than it already is when compared with rechargeable and refillable vapes. The consequence of this would be that a proportion of consumers will be encouraged to move to more sustainable means of vaping, reducing the environmental burden of vaping, as well as reducing the cost of quitting smoking for a significant number of people.

**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?**

At the time the draft regulations were published in January 2024, the timescales for the implementation period seemed to be reasonable. Given that considerable time has elapsed since then, the likelihood of reaching the 1 April 2025 deadline with everything required in place seems highly unlikely. It would now be imperative that a communication strategy involving comprehensive industry guidance is developed to fully inform businesses of their obligations in the run up to the date of the ban coming into force. There is a risk that operators currently selling illicit, non-compliant, oversized single-use vapes will simply ignore the ban.

Effective enforcement should begin very quickly after, if not before the implementation date in order that compliant businesses are not put at an immediate disadvantage after April 2025. There would be significant regulatory benefit in taking action on supply of already illicit product prior to the ban coming into force. This would make preparation for an upsurge in demand more difficult for vendors already brazenly acting outside the law.

**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?**

Reading of the draft regulations has brought some confusion to IBVTA members, particularly in understanding sections 3 (2) and 3 (3) of the regulations. This seems to result from the former being based around a precondition of "unless", and the latter a precondition of "if". We submit that this confusion could be mitigated by changing section 3 (3) to align with section 3 (2) as below, without changing the meaning or intent of the regulation.

*(3) For the purposes of paragraph (1)(b) and (c), a vape is not rechargeable unless it is designed to contain—  
(a) a battery which can be recharged, and*

*(b) a coil which is intended to be replaced by an individual user in the normal course of use, including any coil which is contained in a single-use cartridge or pod which is separately available and can be replaced.*

There has been some commentary and media attention wrongly accusing producers of brands of single use vapes who develop refillable and rechargeable products of somehow “getting around a loophole in the regulations”. It is difficult to see that value in these incorrect accusations, given that post-ban, consumers should have as many product options as possible which are not single use.

Additionally, two principal classes of “extended use” products appeared on the market around the time that a ban was first rumoured. The first of these is the “4-in-1” vape, where four 2ml cartridges or pods can be inserted into a single battery. 4-in-1 products appear to be fully compliant with existing regulations, and will be compliant with the new regulations after a single-use ban. The second of these is the “auto-fill”, or “2+10” vape, where a 2ml vape with a large battery is supplemented by a 10ml “docking” refill container that is retained on the device. Auto-fill devices’ compliance with existing vape regulations is under debate. However, since the coil cannot be replaced in these devices, they will not comply with the single-use vape ban due to the wording of the definitions.

Extended use products have an important place in the market, as they present opportunities to sell legitimate products to consumers that might be tempted by illegal “big puff” disposable vapes. “Big puff” vapes are single-use products that contain more than the legal maximum of 2ml of e-liquid and offer users the advantage of longer life in use, and therefore better value for money. It must be noted that despite their illegality, their longer life offers some environmental advantages.

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

The IBVTA applauds that severe penalties have been associated with offences under these regulations. However, we are also aware that penalties under existing regulations for types of product and age of sale are seldom applied to offenders. Given limited enforcement alongside this, it seems that the low risk of apprehension or consequent penalty mean that many less-reputable retailers accept repeated offences as an acceptable business risk. While the penalties appear proportionate, if they are never or rarely applied in full, then they are neither a punishment nor a deterrent.

#### **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?**

The IBVTA believes that giving extensive powers to local authorities to enforce these regulations is both right and necessary. The high level of illicit trade in vapes is damaging to the sector’s reputation, fails to ensure sufficient notice is paid to age of sale regulations, and means that a big proportion of spend on vapes fuels criminality, and likely organised crime. Adequate enforcement of the ban will rely heavily on there being the necessary funding in place to allow for the level of enforcement required.

#### **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.**

The vape sector is relatively young, and there is a wide spectrum of compliance with existing legislation within its trade. The most obvious challenge for the area is that a very significant proportion of retail sales are already of products not legally sold in the UK. Given this situation, it seems probable that while responsible retailers will move to compliant products when new regulations come into force, less responsible retailers will take advantage of consumer demand for convenient, easy to use, but no longer legal products.

Additionally, there are some difficulties in drawing a direct comparison to the single use plastics ban. Plastic cutlery, plates and stirrers for example are genuinely single-use and have direct replacement or analogous products available that are reusable.

Single-use vapes, importantly, offer a level of convenience in use that has brought a large number of consumers (c.1M) from tobacco smoking to a less harmful alternative. The move from single-use vapes to pre-filled pods, or refillable rechargeable vapes is not as simple for a consumer as changing from a disposable plastic fork to a metal one. It involves a much greater change in the way the product is used and maintained. Use of more sustainable products is more complex and presents much more inconvenience than a simple product substitution. This additional inconvenience will create significant demand for products that are no longer available through legitimate retailers.

**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.**

The policy objectives of the regulations will not be achieved without widespread consumer behaviour change. However, the IBVTA have been dismayed by how much media and political commentary surrounding the introduction of the ban has included messages that potentially reinforce negative public perceptions around the relative safety of vaping versus smoking. In the ASH annual report on adult vaping in the UK published in August 2024 around 50% of both smokers and general population in GB incorrectly believe that vaping is as harmful as, or more harmful than smoking.<sup>1</sup>

A communication strategy involving comprehensive industry guidance must be developed to fully inform businesses of their obligations in the run up to the date of the ban coming into force. There is a risk that operators currently selling illicit, non-complaint, oversized single use vapes will simply ignore the ban.

**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?**

While it is difficult to accurately quantify the size of the existing illicit market in single use vapes, anecdotally, the IBVTA understand it to be approaching the size of the legitimate market. Demand for these products is significant, with an August 2024 Nielsen 52-week market read suggesting sales of 313 million pieces through tracked grocery and convenience channels alone. Potential reactions by consumers, manufacturers and retailers could very easily result in outcomes that are of equal or even higher environmental and/or public health impact that the current status quo. Prohibition of products with very high consumer demand rarely makes those products go away. Supply chains and consumers may simply shift in behaviours and buying patterns to satisfy demand. In short, the demand for single-use vapes is very high and making them illegal can only increase illegal sales.

The regulations do not include a ban on the importation of single use vapes to the UK. Such a ban would mitigate a significant proportion of those risks and might go some way to reducing the extant illegal market. There is a risk that operators currently selling illicit, non-complaint, oversized single use vapes will simply ignore the ban.

**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.**

Given that disposable vape sales were not increasing in the legitimate UK market at the end of 2023, and appear to be declining slightly in 2024, there is a large overestimate in the likely impact of baseline scenarios. This means that the impacts predicted for all the proposed actions are unlikely to be realistic.

The IBVTA is also concerned that due consideration has not been made of the likely effect of the introduction of the regulations on adult consumers, and in particular on groups with specific needs and vulnerabilities. Given that adult consumers using single use disposable vapes outnumber those that are under 18 by several times, it is likely that Human Rights and Equality issues should have been considered more deeply before the draft regulations were published.

A study led by researchers from University College London<sup>2</sup> found that such a ban would have a disproportionate impact on disadvantaged groups that have higher rates of smoking and typically find it harder to quit. While IBVTA members are already achieving success in moving adult single use vape users to refillable, rechargeable products, we do expect some users to either return to smoking or seek out products on the illicit market.

**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?**

As mentioned, the regulations do not include a UK wide importation ban. In terms of cross-border implications within the UK's devolved nations, any ban would seem completely unworkable in the absence of complete alignment.

**Finally, we ask that you disclose in your response any direct or indirect links to the vaping or tobacco industry.**

The Independent British Vape Trade Association (IBVTA) is a not-for-profit, non-political trade association, representing the interests of independent vape businesses along the supply chain. The IBVTA has no direct or indirect links to the tobacco industry, nor do we receive funding from the tobacco industry.

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<sup>1</sup> <https://ash.org.uk/uploads/Use-of-vapes-among-adults-in-Great-Britain-2024.pdf>

<sup>2</sup> Sarah E. Jackson, Harry Tattan-Birch, Lion Shahab, Melissa Oldham, Dimitra Kale, Leonie Brose, Jamie Brown, Who would be affected by a ban on disposable vapes? A population study in Great Britain, Public Health, Volume 227, 2024, Pages 291-298  
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