

Edward Mountain MSP

Convener
Net Zero, Energy and Transport Committee
C/O Clerk to the Committee

netzero.committee@parliament.scot

23 August 2024

Dear Mr Mountain,

Re: The Environmental Protection (Single-use Vapes) (Scotland) Regulations 2024

On behalf of the UK Vaping Industry Association, the largest vaping industry association in the UK representing the entire sector, I would like to thank you for the opportunity to provide our views to the Net Zero, Energy and Transport Committee (the Committee) on the Environmental Protection (Single-use Vapes) (Scotland) Regulations 2024. Please find below the Association's responses to the questions you have raised. We would be more than willing to discuss our submission further if that would be helpful.

As requested, we confirm that the UK Vaping Industry Association does not have any members that are owned or controlled by the tobacco industry, nor does it accept any funding from the tobacco industry. As the industry association for the vaping sector, we are directly linked to the vaping industry and a full list of our members can be found on our website.¹

Thank you again for the opportunity to contribute our views on this important regulation.

Best wishes,

John Dunne
Director-General
UK Vaping Industry Association

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?

Vaping is the most effective method for quitting smoking, offering a lifeline for smokers, saving lives, and saving the NHS millions. To address the environmental challenge of recycling used vapes, retailer take-back schemes must be enforced, waste infrastructure for recycling must be robust, and the Scottish Government should launch a public education campaign to change consumer behaviour and encourage a higher rate of recycling.

We also believe that a licensing scheme for vape retailers would be a far more valuable solution than a ban on single-use vapes. Such a scheme would not only prevent inappropriate businesses – including takeaways, taxi ranks and sweet shops – from selling these products, but it would also ensure approved retailers meet and maintain a strict set of compliance requirements, impose more impactful fines of up to £10,000 for those flouting the law and generate an estimated £50 million plus in annual, self-sustaining funding which could be used to empower Trading Standards and back a proactive national programme of enforcement. A ban on single-use vapes without a robust licensing scheme for distributors and retailers is likely to exacerbate an already thriving black market, which would pose a significant threat to both public health and the environment.

Furthermore, consumer polling conducted by the Association of Convenience Stores found that almost one in four existing vapers said they would continue to use disposables even after a ban is introduced. This would effectively result in a £645 million annual boost for black market sellers across the UK and see more people buying and using potentially dangerous, non-compliant productsⁱⁱ.

More details of our proposed licencing scheme are included in the attached document titled *Policy Briefing: The Future of Vaping Policy to Support a Smokefree Britain 2024*.

Alternatively, the Scottish Government should also explore introducing a ‘deposit return scheme’ for single-use and other vaping products. This would provide a strong incentive for vapers to ensure that they are disposing their products correctly, while also providing an incentive for members of the general public to collect and return any vaping products that they see have been improperly disposed of.

A concern that we do have is that the regulation does not prohibit the importation of single-use vaping products. The UKVIA is deeply concerned that without an importation ban significant numbers of single-use vapes will make their way into Scotland. Hurting the legitimate vaping industry and exacerbating environmental and youth vaping challenges.

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?

The UK Vaping Industry Association is disappointed with the proposed six-month implementation window and had previously advocated to the Westminster Government for an 18–24 month implementation period. This would have allowed vaping retailers sufficient time to work with their customers to help them transition to a reusable product that suits their needs. As it stands, we expect that many users of single-use vapes will have no choice but to revert to smoking or to seek out illegal and potentially dangerous black market vapes.

We would like to highlight that similar transition periods were critical when the Government restricted the sale of 10-pack cigarettes and the sale of menthol-flavoured cigarettes. These transition periods were 12 months and four years, respectively.

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?

We broadly agree with the definition of a single-use vape as outlined in the draft regulation but call for clarity on the definitions of 'not refillable' and 'not rechargeable'. These terms do not consider factors such as battery capacity or the expected number of reuses for a rechargeable and refillable vape, which may lead to challenges.

We also urge the Scottish Government to initiate a public education campaign on the importance of vape recycling in general, to help encourage greater recovery rates of e-cigarettes.

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

The UKVIA strongly supports increased fines and enforcement for those selling illegal products or vaping products to children. Under our proposed licensing scheme, we suggest that the maximum fine for retailers who sell vapes to children should be £10,000, with an additional fine levied on the individual who made the sale. In principle, we are not opposed to the fine for selling prohibited vaping products being increased to a similar level.

However, we are concerned that breaching this regulation could result in a person being sentenced to a term of imprisonment of up to two years. In our view, this is excessive and disproportionate compared to the current potential penalty for selling cigarettes to a child, which does not include the possibility of imprisonment despite being a significantly more serious offence.

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 UKVIA believes that the most effective way to ensure vape retailers fulfil their take-back and recycling obligations, and to deter rogue retailers from selling vapes to children, is through the implementation of a licensing scheme. This approach would also generate revenue to support enhanced enforcement of the regulation. An analysis commissioned by the Association of Convenience Stores recently calculated that Trading Standards requires a substantial funding injection of £168,340,000 over five years to fully enforce existing vape legislation across the UK. In contrast, the proposed licensing scheme is estimated to generate upwards of £50 million per year (£250 million over five years) in self-sustaining funding, while also reducing the enforcement burden for Trading Standards over time by ensuring meaningful and lasting action is taken against rogue traders.ⁱⁱⁱ

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 Scottish Government should focus on enforcing the current legislation that makes it illegal for vape retailers to sell to children, supported by a licensing scheme. Additionally, the Government should initiate a public education campaign to change consumer behaviour and encourage a higher rate of vape recycling. A ban on single-use vapes without a robust licensing scheme for distributors and retailers is likely to exacerbate an already thriving black market, posing a significant threat to both public health and the environment.

As stated prior, without an ban on the importation of single-use vaping products we do not believe that it will be possible to effectively enforce the regulation. While this regulation will mean that the legitimate vaping industry does not supply single-use vaping products, the black market will continue to supply single-use vaping products to people throughout Scotland and the UK. Potentially exacerbating underage vaping and resulting in more harmful unregulated products being used.

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 regulations are insufficient to meet these objectives, as the ban is likely to result in an increase in black market products, which are more environmentally harmful and harder to police or control. The introduction of a licensing scheme for vape retailers and distributors is the only effective way to achieve these objectives. The Scottish and Westminster Governments must work together with the industry to implement this. Additionally, the Scottish Government should initiate a public education campaign to change consumer behaviour and encourage a higher rate of vape recycling.

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?

Following a ban, there will likely be a significant increase in black market single-use vape products, adding to the already substantial proportion of illicit vape products on the market. Research from Australia, where access to vapes is heavily restricted, shows that the black market now accounts for 90% of the market. Industry experts have consistently warned the Government that increased regulation of the e-cigarette market must be carefully orchestrated to prevent vapers from turning to illicit products.

The illicit market will flourish due to a lack of effective law enforcement. The Government must ensure that appropriate resources and commitment are provided to Trading Standards to effectively police those selling illicit vapes, thereby minimising the volume of waste from

illegal devices. The industry has long recommended this, specifically asking the Government to introduce on-the-spot fines of up to £10,000 for retailers selling to under-18s or selling illicit products. The UKVIA also recommends the introduction of a nationwide vape licensing scheme to help address the illegal market, which would educate retailers while giving Trading Standards the ability to revoke licences from shops that break the law.

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.

The UKVIA has a range of views on the various impact assessments that have been presented. These are categorised below:

Financial and Business Impacts

The proposed ban on single-use vapes is expected to have a substantial financial impact on businesses across Scotland, particularly those that rely heavily on the sale of these products. The vaping industry in Scotland, although a smaller segment compared to the UK as a whole, still contributes significantly to the economy, with a turnover of approximately £107 million. The majority of this turnover is linked to the import and retail of single-use vapes, which dominate the market due to their popularity among consumers.

The ban is likely to lead to a sharp decline in sales for retailers, particularly small and medium-sized enterprises (SMEs) that operate on thin margins. These businesses could face severe financial stress, potentially leading to closures and job losses. Furthermore, the ban could exacerbate existing economic challenges, particularly in the context of the ongoing cost-of-living crisis, where businesses are already struggling to remain viable.

Moreover, the assessments acknowledge the potential for an increase in illicit market activity, which could not only undermine legitimate businesses but also lead to a proliferation of unsafe and non-compliant products. The UKVIA strongly believes that a more effective solution would involve a licensing scheme for retailers, which would both regulate the market and generate substantial funding to support enforcement efforts, rather than an outright ban that could have detrimental economic consequences.

Environmental Impacts

While the environmental concerns surrounding single-use vapes are valid, the UKVIA is concerned that the impact assessments do not fully consider the unintended consequences of a ban. For example, the likely increase in black market activity could result in a greater environmental burden, as these products are less likely to be disposed of properly and more difficult to regulate.

Additionally, the assessments highlight the difficulty and expense associated with recycling single-use vapes. The UKVIA agrees that recycling infrastructure needs to be significantly improved. However, rather than a ban, we propose enhanced take-back schemes and public education campaigns to encourage responsible disposal and recycling of vapes. This approach would mitigate environmental harm while still allowing consumers access to safer, regulated products.

Equality Impacts

The UKVIA notes that the impact assessments acknowledge the potential negative effects on low-income groups, who are more likely to use single-use vapes due to their lower upfront costs compared to reusable alternatives. The ban could disproportionately affect these groups, forcing them either to revert to smoking or turn to the black market for cheaper, unregulated products, both of which carry higher health risks.

Furthermore, the potential increase in the cost of vaping products, driven by a shift to more expensive reusable vapes, may exacerbate existing inequalities. The UKVIA suggests that any regulatory approach should carefully consider these socio-economic impacts and prioritise measures that do not disproportionately burden vulnerable populations.

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?

The UKVIA supports the establishment of a universal regulatory framework for vaping products across the UK. To ensure compliance and ease of business, it is vital that the regulations introduced by the various jurisdictions are as closely aligned as possible.

ⁱ <https://ukvia.co.uk/apply-for-membership/>

ⁱⁱ <https://www.acs.org.uk/press-releases/acs-warns-ps645m-boost-illicit-trade-after-disposable-vape-ban>

ⁱⁱⁱ <https://ukvia.co.uk/ukvia-calls-for-a-licence-to-kill-the-black-market-and-plug-the-multi-million-pound-hole-in-trading-standards-budgets/>