

Policy options to tackle the issue of disposable (single-use) vapes

Purpose

1. This paper by Action on Smoking and Health (ASH), the Chartered Trading Standards Institute (CTSI) and Material Focus sets out the problems being caused by disposable vapes, policy options for addressing these, and how potential adverse unintended consequences could be mitigated.
2. Since 2021 a new type of disposable vape has come on the market which is easy to use, attractive and widely available at prices children can easily afford. Prior to their emergence in 2021, significantly fewer children vaped, and when they did they mainly used rechargeable, reusable vapes, which are significantly more expensive to buy.
3. There is also growing use of disposable e-cigarettes by adult vapers, and sales of disposable, single use vapes have grown rapidly as has their environmental impact. Disposable vapes are single use plastic devices containing a lithium battery, which are commonly used for only a day or so before being discarded, with inadequate recycling.
4. Use of disposable e-cigarettes by adult vapers has also grown substantially. In 2021 the overwhelming majority (95%) of adult vapers said their main device was a rechargeable, refillable vape. By 2023 the use of rechargeable vapes as the main device had fallen to 67%, while disposables as the main device had risen to 31%.
5. The policy objective is to reduce underage vaping, and the adverse environmental impact of disposable vapes. Three potential policy options are examined set out below and under each option the potential benefits and risk mitigations are detailed.
 - 1) Do nothing
 - 2) Ban disposable vapes
 - 3) Strengthen regulation of disposable vapes

Background

6. Use of disposable vapes has grown rapidly in the last two years, particularly among children and young adults. In 2023 69% of children who currently vape said they most frequently used a disposable, up from half (52%) in 2022 and fewer than one in ten (7.7%) in 2021. The proportion of children currently vaping has more than doubled since 2021 (from 3.2% to 7.6%) and experimentation (trying once or twice) has grown by 50% in the last year (from 7.7% to 11.2%). ASH youth surveys find growing awareness among children of their promotion, in shops and online,ⁱ particularly on Tik Tok as well as growing peer pressure to vape.
7. There is also growing use of disposable e-cigarettes by adult vapers. In 2021 the overwhelming majority (95%) of adult vapers said their main device was a rechargeable, refillable vape. By 2023 the use of rechargeable vapes as the main device had fallen to 67%, while disposables as the main device had risen to 31%. Combined with continued growth in the number of adults who vape, this results in a rapidly growing number of vapes being discarded.
8. Disposable vapes also appear more likely to breach UK regulations with trading standards teams reporting seizing increasing numbers of illegal products.ⁱⁱ Trading

standards teams across the UK are having to cover the high costs of recycling impounded vapes, with very limited financial support to do so.

9. There are also environmental concerns. Research commissioned by Material Focus in May 2022 found that at least 1.3 million disposable vapes are thrown away every week, equivalent to over 67 million a year.ⁱⁱⁱ These products contain plastic, metals, lithium batteries etc which must be properly recycled to avoid them becoming hazardous and to protect the environment and also ensure that key materials such as lithium and copper can be re-used in the green economy such as electric vehicles and ev charging infrastructures. The current requirements on producers are insufficient to meet the costs of managing waste produced by disposable vapes and too few consumers are disposing of products responsibly.
10. As such there are good health, environmental and enforcement reasons to substantially reduce the size of the market for disposable vapes. Refillable vapes were a popular and valuable quitting aid for smokers prior to the increased popularity of disposable vapes and provide a good alternative for adults using vapes to quit and prevent relapse back to smoking.

Policy option 1) Do nothing

11. The option of doing nothing should always be considered. However, since the decision to do nothing was taken by the Government after the Post-Implementation review of the Tobacco and Related Product Regulations in 2022, use of disposable vapes has grown rapidly, and Government has committed to act to address the problem. Therefore doing nothing is no longer an appropriate option.

Policy option 2) Ban disposable (single-use) vapes

12. A ban on disposable vapes has been proposed by the Royal College of Paediatrics and Child Health and is supported by the Local Government Association and others including former health Minister Caroline Johnson MP. Although we agree with the objective of a ban, there are serious concerns about whether a ban would be the most effective intervention to achieve the policy goal, for the following reasons:
 - i. Implementing a ban sounds simple, but in practice there are complex questions to be answered about how it could be defined, and effectively implemented.
 - ii. There is an already established illegal supply chain. A ban could see an illegal market grow and fail to significantly reduce levels of use. For example after Bhutan banned the sale of tobacco in 2004, the illegal market ballooned and child smoking rates went up, not down.^{iv}
 - iii. A ban will not, in and of itself, generate increased enforcement powers or resources to remove vapes from the market. Trading standards lack the capacity to address the current levels of illegal products and underage sales, and without significantly expanded capacity could not meet the increased pressures a ban would cause.
 - iv. Developing and implementing recycling solutions for disposable vapes is costly. Currently a legal industry can be compelled to develop those solutions and fund safe recycling of products, an illegal market cannot be compelled in the same way.
 - v. Vaping is a much less harmful alternative to smoking. Smokers already have established false perceptions about the harms from vaping compared to smoking. A ban on disposable vapes, while smoked tobacco remains legal, is likely to reinforce these misperceptions.

- vi. Disposable vapes are valuable for some vulnerable groups of smokers such as those with dexterity issues, with learning difficulties and detained in mental health settings.

13. Set out below are suggestions for how the potential problems associated with a ban might be addressed.

Definition of disposable (single-use) vaping products

14. A definition will be needed that is easy to understand, implement, and enforce.

Consideration will need to be given to the following:

- Will the definition include disposable vapes which do not contain nicotine? It will be challenging to enforce a ban unless they do.
- Will the definition be sufficiently flexible to include products which are designed to be re-usable in theory, but are single-use in practice?
- How will single-use components of rechargeable products be treated such as pods, coils etc?
- Will brand-sharing between disposable and re-usable products be permitted?

Definition of a ban

15. Currently we have a ban on the sale of vapes which do not comply with UK regulations for consumption in Great Britain. The ban does not cover the importation of illegal vapes or products in transit, for consumption outside Great Britain. This is creating major challenges for enforcement as they cannot be easily stopped at the border. It is therefore important to define what is meant by a ban. Consideration will also need to be given to how a ban on importation of particular products might operate in Northern Ireland in the context of the border with the EU.

Enforcement powers (inland)

16. Clarity will be needed as to who is responsible for enforcing any ban. If regulations are brought in under environmental legislation, it will be necessary to ensure that whoever is given the responsibility to enforce the law has the powers, the expertise and the capacity to do so.

Enforcement powers (at the border)

17. Currently Border Force has insufficient powers at the border to prevent the flow of illegal products into the UK. A ban on disposable vapes must ensure that products can be turned away at the border. This will likely require controls across all forms of vaping products and ensure that there is a ban on importation rather than simply on sale.

Enforcement resources

18. The major challenge of a ban will be ensuring the capacity to enforce legislation. The capacity of trading standards inland will need to be expanded to enable them to both enforce the new law and continue to play their part in addressing the very harmful illegal market in tobacco and enforce other tobacco and vaping regulations such as age of sale. The LGA have already called for increased investment of £30m for Public Health Budgets to tackle vaping, twenty times the £3 million over two years committed to by the Government earlier this year.^v

Development of recycling facilitates and solutions

19. Recycling of vaping products, whether legal or illegal, is currently challenging and expensive but possible. More investment is needed to put in place effective processes and ensure the public recycle products whether they are legal or illegal.
20. Currently the legal market can be compelled to pay for the development of solutions, for the costs associated with any recycling schemes and to promote use of the scheme by consumers. However, producers are falling short of their requirements under the law and there is insufficient regulatory action to compel them to comply.
21. Discussions are underway about strengthening the requirements on producers, such as fully funding the cost of collecting and recycling vapes, making sure the products are designed so that they are easier to recycle and ensuring environmental compliance with waste electrical, portable batteries and packaging regulations. If products are banned then it will fall to the government (national and local) to cover the full costs of developing recycling solutions, paying for the recycling of illegal products communicating to consumers how to recycle responsibly and ensuring they do so at scale.

Destruction of illegal products

22. Linked to the above. The solutions being funded by the legal industry are being offered to enforcers to help dispose of the large amounts of illegal products seized.

Communicating ban to existing smokers

23. Public perceptions of the harms from vaping are more inaccurate than they have ever been. In ASH's last survey 39% of smokers reported that they believe vaping is as or more harmful than smoking. The Government recently announced its new swap to stop scheme which will support smokers to stop through providing a million vape starter kits. The benefit of these scheme will be maximised if smokers accurately understand how much less harmful than smoking vaping is, and also a recycling system is put in place to ensure these vape starter kits are recycled. A ban on disposable vapes will need very careful communication to avoid reinforcing the inaccurate views held by smokers.

Needs of vulnerable smokers

24. Services around the country report that for some vulnerable groups of smokers disposable vapes are a good alternative to smoking. These include those in mental health setting where rechargeable products may be limited due to concerns around self-harming behaviours, elderly smokers or those who dexterity issues or learning difficulties who may find refillable products too complex as a first step. Making disposable vapes illegal will mean some patient groups who could benefit from using them will lose out which may reduce their likelihood of quitting smoking.
25. If a decision were taken to proceed with a ban, the risks identified above would need to be mitigated. This would require:
 - i. Careful development and consultation on any potential legislation to ban disposable products, to ensure potential loopholes, such as those set out above, are identified and the risks mitigated.
 - ii. Development and implementation of a well-funded anti-smuggling strategy to be in place in advance of a ban. Regular monitoring and evaluation of the size and composition of the illicit market for vapes, and in particular disposable vapes, is also essential to ensure the impact of a ban can be evaluated properly.
 - iii. Provision of government funding for the recycling and/or destruction of illegal vapes.

- iv. A public education campaign to explain why disposable vapes are being banned and to build support for the ban, to include communication of the relative risks of vaping and smoking.
- v. Commissioning research to identify the number of vulnerable smokers for whom disposable vapes are currently the best option, and identification of suitable alternatives.

Policy option 3) Strengthen regulation of disposable vapes

26. The alternative to “do nothing” or “ban disposable vapes” is enhanced regulation, the option supported by ASH, as we believe that dampening demand could be more effectively achieved through stricter regulation and enforcement of the legal market than by making the existing legitimate market illegal. In response to the government’s consultation on youth vaping ASH called for the following regulatory action to be taken to increase enforcement powers, while reducing the affordability of disposable vapes, and to reduce promotion, and appeal of vapes to children by:

- i. Making all vapes an excisable product which would give more powers to Border Force and HMRC to prevent illegal vapes flooding into the UK. This would also facilitate the development and implementation of an effective anti-smuggling strategy for vapes by HMRC and Border Force.
- ii. Within any excise tax reusable and rechargeable products could be zero-rated so as to maintain competitiveness with tobacco. A tax on disposable vapes could be levied sufficient to increase their price to be the same as the equivalent re-usable product (at the time of the response it was estimated this would require a specific excise tax of £5 per disposable vape). The issue of definition remains, but it would be easier to resolve if it applied to legal products, rather than marking a distinction between what is legal and what is illegal.
- iii. For the whole vaping category prohibit branding with appeal to children: eliminating bright colours, sweet names and cartoon characters.
- iv. For the whole vaping category prohibit promotion of e-cigarettes in shops: putting vapes out of sight and out of reach of children.

27. In addition, to the above revision of environmental regulations is needed to ensure that the full environmental costs of collecting and recycling vapes are met by industry and not by public finances. Vaping products currently fall within WEEE regulations, but companies are not complying with their obligations. Those importing and selling vapes in the UK must be required to cover the costs of recycling schemes, the promotion of those schemes to consumers and held responsible for the level of recycling undertaken. To achieve this Material Focus would like to see:

- i. The development of more effective and accessible recycling schemes for vapes, particularly ‘disposable’ vapes. These should include reinforcement of in-store take back schemes as well as recycling points in public spaces such as parks and bars.
- ii. Registration with environment agencies via producer compliance schemes made a prior to market mandatory component of the MHRA e-cigarette notification scheme.
- iii. Creation of a separate category for vapes within WEEE regulations to ensure that producers, importers and retailers are required to fully finance takeback.
- iv. Products to no longer be marketed as disposable.
- v. Products to be clearly marked as recyclable.

28. Finally, enforcement of existing regulations around vaping products is already challenging due to loopholes and lack of capacity within enforcement teams. CTSI and

ASH believe immediate action is needed to ensure as many illegal products as possible can be stopped at the border through significant long term investment in local and regional Trading Standards teams. While we welcome the announcement of a review to give trading standards the power to apply fixed penalties for breaches of vape legislation and closing loopholes such as free distribution and regulation of 0% nicotine products this is insufficient in the light of the current rate of growth in underage vaping and the illicit market. The Government must also commit to make it an offence to import vaping products that do not meet UK standards to enable additional action at the border.

References

ⁱ Parnham JC, Vrinten C, Cheeseman H, Bunce L, Hopkinson NS, Filippidis FT, Lavery A. Changing awareness and sources of tobacco and e-cigarettes among children in Great Britain. *Tobacco Control Journal*. August 2023.

ⁱⁱ <https://www.tradingstandards.uk/media/3178685/ctsi-statement-on-vapes-1.pdf>

ⁱⁱⁱ Material Focus. *One million single use vapes thrown away every week contributing to the growing e-waste challenge in the UK*. 2022. Available from <https://www.materialfocus.org.uk/press-releases/one-million-single-use-vapes-thrown-away-every-week-contributing-to-the-growing-e-waste-challenge-in-the-uk/> (Accessed 07/06/2023).

^{iv} <https://www.talkingdrugs.org/what-can-new-zealand-learn-from-bhutans-tobacco-ban/>

^v <https://www.gov.uk/government/speeches/minister-neil-obrien-speech-on-achieving-smokefree-2030-cutting-smoking-and-stopping-kids-vaping#:~:text=Working%20hand%20in%20glove%20with,illicit%20vapes%20and%20underage%20sales.>