

Research Briefing

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Shop displays of tobacco and vaping products



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Summary

Currently, in the UK shop displays of tobacco and vaping products (e-cigarettes and e-liquids) are treated very differently. Displays of tobacco products in large and small shops are subject to strict regulation, but there are no measures to regulate the display of vaping products.

The tobacco control provisions in the [Health Act 2009](#) (HA 2009) aim to reduce smoking uptake among children whilst supporting those people who smoke and want to quit. [Section 21](#) of the Act inserts new sections 7A and 7B into the [Tobacco Advertising and Promotion Act 2002](#) (TAPA 2002) which prohibit tobacco displays in large and small shops in England and Wales.

[Section 7A\(1\)](#) of the TAPA 2002 provides that a person who in the course of a business displays tobacco products, or causes them to be displayed, in a place (as specified in regulations) is guilty of an offence. [Section 7B\(3\)](#) allows the appropriate minister to provide in regulations that no offence is committed if the display complies with requirements specified in the regulations.

The [Tobacco Advertising and Promotion \(Display\) \(England\) Regulations 2010](#) (known as the ‘Tobacco Display regulations’) were made under powers given to the Secretary of State for Health and Social Care by sections 7A and 7B of the TAPA 2002. The Regulations, which deal with the practicalities of shops implementing the prohibition of tobacco product displays, were amended by the [Tobacco Advertising and Promotion \(Display and Specialist Tobacconists\) \(England\) \(Amendment\) regulations 2012](#). In brief, the Regulations:

- Enable retailers to make temporary, limited size displays on request when selling a tobacco product to a customer aged 18 or over.
- Provide for low-cost solutions to be used in covering tobacco displays in shops.
- Permit bulk-tobacconists to display tobacco in designated tobacco display areas.

The Regulations came into force on 6 April 2012 for large shops and on 6 April 2015 for all other shops.

The requirements for specialist tobacconists are set out in separate regulations, the [Tobacco Advertising and Promotion \(Specialist Tobacconists\) \(England\) Regulations 2010](#) (known as the ‘Specialist Tobacconists Regulations’) as amended by the [Tobacco Advertising and Promotion \(Display and Specialist Tobacconists\) \(England\) \(Amendment\) regulations 2012](#). Under these Regulations, specialist tobacconists can display and advertise tobacco products inside their shops provided they are not visible from outside.

Conversely, there are no measures to regulate the display of vaping products in large and small shops in the UK. Vaping products with colourful brand packaging are openly and prominently displayed on countertops, at till points, and in eye-catching display towers on the shop floor of supermarkets.

On 11 April 2023 the Government launched a [call for evidence](#) to help identify opportunities to reduce the number of children (those under 18) accessing and using vaping products, while ensuring they are still easily available as a quit aid for adult smokers. On 4 October 2023, the Government published [Stopping the start: our new plan to create a smokefree generation](#). In this policy paper, the Government raised concerns about the number of children who were vaping and made clear that “marketing vapes to children was utterly unacceptable”. The Government stated it was considering bringing forward legislation on point of sale displays of vaping products in shops.

This briefing sets out in detail the scope and extent of the prohibition of tobacco displays in shops and the treatment of specialist tobacconists. It outlines recent calls for tighter regulation of the display of vaping products in shops of all sizes to protect children. Finally, it considers the Government’s decision to consult on possible new legislation to regulate displays of vaping products in retail outlets as set out in its October 2023 policy paper.

1 Shop displays of tobacco products

1.1 Policy background

Tobacco control measures were debated during the Health Bill's progress through Parliament (now the [Health Act 2009](#)). Regarding England and Wales, the Government said evidence supported a prohibition on tobacco displays and that a similar ban in Ireland and elsewhere had been effective.¹ Those who opposed the ban argued that the cost of removing tobacco displays would affect small businesses at a difficult time.²

The Department of Health (now the Department of Health & Social Care) ran a consultation from 12 October 2009 to 4 January 2010 on draft regulations to implement section 21 of the HA 2009. The consultation sought views on how best to introduce a general prohibition of tobacco displays given different retailing environments.

In this consultation, the Government suggested that under the counter or overhead solutions would be an appropriate method of compliance with the Regulations, allowing sales assistants to select products for a customer without revealing tobacco to the general public. However, the [Association of Convenience Stores](#) estimated that under the counter solutions would cost as much as £4,965 per shop (taking into account the cost of the unit, fitting, and installation).³ The [British Retail Consortium](#) estimated the cost as being between £2,500 and £10,000 per store depending on the size of unit.⁴ The [Impact Assessment](#) (PDF) that accompanied the draft Regulations estimated the compliance cost at £4,965 average per small store, and £7,500 average per larger store.⁵

The [Tobacco Advertising and Promotion \(Display\) \(England\) Regulations 2010](#) (the "Tobacco Display Regulations") were laid before Parliament on 2 March 2010.⁶ The Department of Health explained the policy rationale as follows:

The primary focus of the tobacco provisions in the Health Act 2009 is on protecting children and young people from the health harms of smoking. A

¹ HC Deb 12 October 2009 c104

² HC Deb 12 October 2009 c85

³ Department of Health, [Impact Assessment of Regulations Supporting the Prohibition of the Display of Tobacco at Point of Sale](#) (PDF)(online) 26 January 2010 (accessed 24 October 2023)

⁴ As above

⁵ As above

⁶ SI No. 442/ 2010

consequential benefit of the policy will be to create a more supportive environment for adults who are trying to quit smoking.

The Department of Health has evidence that two thirds of smokers start smoking regularly before the age of 18. The Government wishes to take action to enable young people not to start smoking, and to support those people who want to give up smoking. It has extensive evidence that both tobacco advertising and tobacco promotion through displays of products encourages young people to start smoking, and that since the Tobacco Advertising and Promotion Act 2002 banned tobacco advertising, the tobacco industry has increasingly focused on the display of tobacco in shops as a way of promoting its products.

[...] These regulations recognise that retailers need to be able to serve customers, restock products, and staff need to know where products are kept. The regulations therefore give exemptions to temporary displays during serving a customer and restocking and they allow for labels on storage units, all subject to specified restrictions.⁷

The [Impact Assessment](#) (PDF) outlined the steps retailers would need to take to comply with the Regulations:

In drafting regulations, we have attempted to enable cost-effective solutions, like those seen in Canada, to be developed. That is why regulations would allow a small area of display to be visible when serving a customer. This would enable shopkeepers to keep their existing tobacco shelving and apply simple covers that can be lifted when serving a customer and avoids the need for under the counter or overhead solutions to be installed.

In addition, specialist tobacconists, which tend to be small shops, will still be able to display their tobacco products as long as they are not visible from outside the shop. This means changes to specialist shops will be minimal, limiting the cost of compliance to small businesses.⁸

However, in a written [Ministerial Statement](#)⁹ to the House of Commons on 9 March 2011, Andrew Lansley, then Secretary of State for Health, announced that implementation of the Tobacco Display Regulations would be delayed and the law made more practical for retailers by:

- Increasing the size of temporary displays allowed when serving customers and re-stocking (from 0.75 to 1.5 square metres).
- Adding to the circumstances in which temporary displays can occur, for example, to carry out stock-taking and other activities necessary in running a business.

The Regulations were subsequently amended by the [Tobacco Advertising and Promotion \(Display and Specialist Tobacconists\) \(England\) \(Amendment\) Regulations 2012](#). These amending regulations fulfilled the Government's

⁷ [Explanatory Memorandum to the Tobacco Advertising and Promotion \(Display \(England\) Regulations 2010](#), SI No. 445/2010

⁸ As above

⁹ [HC Deb 9 March 2011 c.67-69WS](#)

commitment set out in [Healthy Lives, Healthy People: A Tobacco Control Plan for England](#)¹⁰ to amend the tobacco display legislation to mitigate burdens on business while maintaining the expected public health benefits in the longer-term.

The [Tobacco Advertising and Promotion \(Display\) \(England\) Regulations 2010](#) (as amended) came into force on 6 April 2012 for large shops and on 6 April 2015 for all other shops. A 'large' store being defined as having a relevant floor area exceeding 280 sq. m/3,000 sq. ft. Recognising that compliance might be harder for small businesses, the Government gave smaller shops an additional 2 years in which to comply with the prohibition on tobacco displays. [Regulation 9](#) revoked the Tobacco Advertising and Promotion (Point of Sale) Regulations (2004).

1.2

Specialist tobacconists

On consideration of responses to a consultation on draft regulations (held from October to January 2010), Health Ministers decided that it was appropriate to provide a restricted exemption from the tobacco display prohibition for specialist tobacconists:

This decision recognises the nature of this particular type of retailer and feels that the regulations strike the right balance between achieving the public health aims of the legislation whilst not creating unnecessary burdens for these businesses.¹¹

The [Tobacco Advertising and Promotion \(Specialist Tobacconists\) \(England\) Regulations 2010](#) (as amended by the [Tobacco Advertising and Promotion \(Display and Specialist Tobacconists\) \(England\) \(Amendment\) Regulations 2012](#)) give an exemption, with restrictions, for specialist tobacconists, allowing them to display tobacco products within their stores. According to the Government, the reason for the exemption was because of the specialist nature of their trade and because young people are not commonly customers in specialist tobacconists:

It is not believed that specialist tobacconists are a source of tobacco for either under 18-year-olds or a source of temptation for adults trying to quit smoking. In order to maintain this position, however, specialist tobacconists are being restricted so that display and advertising of tobacco products are not visible from outside the shop. This will bring Specialist Tobacconists in line with the general policy of removing tobacco product displays from the general public view. We understand there are only about 45 stores in England that qualify to be Specialist Tobacconists. To be a specialist tobacconist, a shop must meet the conditions set out in section 6 of the Tobacco Advertising and Promotion Act 2002, including the requirement for 50% of sales to be from specialist tobacco products (not cigarettes or hand rolling tobacco) and smoking

¹⁰ Department of Health and Social Care, [The Tobacco control Plan for England](#), 9 March 2011

¹¹ [Explanatory Memorandum to the Tobacco Advertising and Promotion \(Specialist Tobacconists\) \(England\) Regulations 2010, SI No.446/2010](#) (PDF) (SI No. 446/2010), page 3

accessories. Accompanying regulations on requirements for the removal of the display of tobacco products and tobacco product price lists are subject to separate regulations.¹²

The Regulations came into force on 6 April 2015.

¹² As above, page 2

2 Prohibition of tobacco displays legislation in detail

2.1 Health Act 2009 (HA 2009)

[Part 3](#) of the [HA 2009](#) contains miscellaneous provisions, including five tobacco control provisions. [Section 21](#) of Part 3 prohibits the display of tobacco products at the point of sale in shops by inserting new [sections 7A](#) and [7B](#) into the [TAPA 2002](#). “Point of sale” is taken to mean shop display units, often referred to as gantries. The overriding aim being to protect children and young people from the harm caused by smoking.

2.2 Tobacco Advertising and Promotion Act 2002 (TAPA 2002)

[Section 7A\(1\)](#) of the TAPA 2002 provides that a person who, in the course of business, displays tobacco products or causes them to be displayed in a place is guilty of an offence. [Section 7A\(2\)](#) allows the appropriate minister to make regulations providing for the meaning of ‘place’.¹³

However, [section 7B](#) of the TAPA 2002 provides for certain exclusions. Specifically, no offence is committed under section 7A if:

- The tobacco products are displayed in the course of a business which is part of the tobacco trade, they are displayed for the purposes of that trade, and the display is accessible only to persons who are engaged in, or employed by, a business which is also part of that trade ([section 7B\(1\)](#)).
- Recognising that some consumers might like to see a product before purchase, no offence is committed under section 7A if the display is a “requested display” to an individual aged 18 or over ([section 7B\(2\)](#)). As defined in [section 7B\(8\)](#), “a requested display” means a display to an

¹³ Under [section 3 of the Tobacco Advertising and Promotion \(Display\) \(England\) Regulations 2010](#) (as amended), “place” means a premises in England where tobacco products are offered for sale in the course of a business, other than premises (a) which are accessible only to persons who are engaged in, or employed by, a business which is part of the tobacco trade; and (b) from which the prices of tobacco products are not visible from the outside of the premises.

individual following a particular request by them to purchase a tobacco product, or for information about a tobacco product.

- The appropriate minister may provide in regulations that no offence is committed under section 7A if the display complies with requirements specified in the regulations ([section 7B\(3\)](#)).

There is also a statutory defence. Where a person is charged with an offence under section 7A in a case where the display is a requested display to an individual aged under 18, it is a defence under [Section 7B\(5\)](#) that the person making the tobacco display believed the individual was aged 18 or over and either had taken all ‘reasonable’ steps to establish the individual’s age, or from the individual’s appearance nobody could reasonably have suspected that the individual was aged under 18 years. Under [section 7B\(6\)](#), A person is treated as having taken all reasonable steps to establish an individual’s age if:

- the person asked the individual for evidence of the individual’s age, and
- the evidence produced would have convinced a reasonable person.

Where a person is charged with an offence under section 7A by reason of having caused the display of a tobacco product to someone under 18, it is a defence, that they exercised all due diligence to avoid committing the offence ([section 7A\(7\)](#)).

2.3 Tobacco Display Regulations 2010 (amended)

The [Tobacco Advertising and Promotion \(Display\) \(England\) Regulations 2010](#)¹⁴ (as amended by [Tobacco Advertising and Promotion \(Display and Specialist Tobacconists\) \(England\) \(Amendment\) Regulations 2012](#)¹⁵) were made under enabling provisions contained in [section 7A](#) and [section 7B](#) of the [TAPA 2002](#).

The Regulations provide exemptions from the prohibition of tobacco displays imposed by section 7A(1) of the TAPA 2002. All shops are required to cover up tobacco shelving, but retailers are free to cover the gantry as they see fit, provided they comply with the Regulations.

The Regulations recognise that retailers need to be able to serve customers, restock products, and staff need to know where products are kept. The Regulations therefore give exemptions to temporary displays during serving a customer and restocking and they allow for labels on storage units, all subject to specified restrictions. The following key provisions should be noted:

¹⁴ SI 2010 No.445

¹⁵ SI 2012 No.677

- [Regulation 4](#) applies where, in response to a “requested display” made by an individual aged 18, a shop worker removes a tobacco product from a storage unit or puts it on the counter during sale. No offence is committed under section 7A(1) of the TAPA 2002 if the display is solely as a consequence of the requested display and lasts no longer than is necessary to remove the requested product from the storage unit, and the area of storage unit displayed does not exceed 1.5 square metres square metres.
- The Regulations also recognise the particular circumstances of duty-free and other retailers only selling tobacco products to the public in bulk quantities, referred to in the Regulations as “bulk tobacconists”. Under [Regulation 5](#), no offence is committed under section 7A(1) of the TAPA 2002 by a display of tobacco products provided the display is in a part of the shop (“the tobacco area”) containing tobacco products and accessories only, and the display is not visible from outside the tobacco area. A notice should also be exhibited at the entrance to the tobacco area stating, “It is illegal to sell tobacco products to anyone under the age of 18”.
- [Regulation 6](#) applies where a person is actively engaged in restocking a storage unit (or other “incidental displays” such as stock taking, staff training or the as cleaning, maintenance or refurbishment of the storage unit). No offence is committed under section 7A(1) of the TAPA 2002 by a display of tobacco products if, tobacco products are displayed in the course of being placed in the storage unit only, the display lasts for no longer than is necessary, and the area of storage unit displayed does not exceed 1.5 square metres. At all other times, businesses must cover up their displays of tobacco products.
- Similarly, under [Regulation 7](#), no offence is committed under section 7A(1) of the TAPA 2002 by a display of tobacco products if that display is requested by a duly authorised officer of an enforcement authority (eg local authorities trading standards), a police constable, or an officer of Revenue and Customs. All must be acting in the course of their duty.
- [Regulation 8](#) applies to indications on storage units of the tobacco products held in the unit. No offence is committed under section 2 of the TAPA 2002 (prohibition of tobacco advertising) if the indication complies with the requirements set out in Regulation 8(3). In brief, the indication must be limited to the following information:
 - The brand name of the product
 - Where pre-packed, the number of units in the packages or, where sold by weight, the net weight of the product
 - In relation only to cigars, the country of origin and dimensions
 - In relation only to pipe tobacco, the cut and type of tobacco used

- The price of the product

Indications must not contain any other features (such as a logo, trademark, or symbol) and must conform to strict specifications on size, typeface, font, colour of print, and background colour.

Finally, there is a requirement for the Secretary of State to review the operation and effectiveness of the Regulations every five years and publish a report. The Display Regulations do not apply to specialist tobacconists. Separate regulations have been made in respect of specialist tobacconists (see below).

The Tobacco Display Regulations apply only to England, but the regulation making powers in new section 7A and 7B of the TAPA 2002 apply to England, Wales and Northern Ireland. Wales and Northern Ireland have regulated in a similar manner on tobacco product displays.

Responsibility for tobacco regulation is devolved to the Scottish Parliament. The [Tobacco and Primary Medical Services \(Scotland\) Act 2010](#) contains measures aimed at reducing the appeal and availability of tobacco to children and young people under the age of 18. The Act bans the display of tobacco and smoking related products in shops.

2.4

Specialist Tobacconists Regulations 2010 (amended)

The requirements for specialist tobacconists in relation to the prohibition of tobacco displays are set out in separate regulations, the [Tobacco Advertising and Promotion \(Specialist Tobacconists\) \(England\) Regulations 2010](#), known as the “Specialist Tobacconists Regulations”.¹⁶ The Regulations were subsequently amended by the [Tobacco Advertising and Promotion \(Display and Specialist Tobacconists\) \(England\) \(Amendment\) Regulations 2012](#). The Specialist Tobacconists Regulations came into force on 6 April 2015.¹⁷

For the purposes of the Regulations, a specialist tobacconist is a shop selling tobacco products by retail, where more than half of sales on the premises are of cigars, snuff, pipe tobacco and smoking accessories (such as pipes, lighters, and cigarette papers).¹⁸ The Regulations are straightforward. Specialist tobacconists are permitted to advertise and display specialist tobacco products inside their shops, provided they are not visible from outside the shop.

Specifically, under [Regulation 2](#), no offence is committed under section 2 of the TAPA 2002 (prohibition of tobacco advertising) if a tobacco advertisement

¹⁶ SI 2010 No. 446

¹⁷ The Tobacco Advertising and Promotion (Specialist Tobacconists) Regulations 2004 were revoked

¹⁸ Section 6(2) [Tobacco Advertising and Promotion Act 2002](#)

is in a specialist tobacconist, is not for cigarettes or hand-rolling tobacco, and complies with specified requirements. For example, the tobacco advertisement must not be visible from outside of the premises; each advertisement must contain the required health warning and health information in the specified form.

Under [Regulation 3](#), no offence is committed under section 7A(1) of the TAPA 2002 by a display of tobacco products if the display is in a specialist tobacconist and is not visible from outside of the premises.

Finally, the Secretary of State must from time to time carry out a review of the effectiveness of the Regulations and publish a report.

The Regulations apply only to England. However, Wales and Northern Ireland have regulated in a similar manner. The [Tobacco and Primary Medical Services \(Scotland\) Act 2010](#) (PDF) regulates specialist tobacconists operating in Scotland.

3 Shop displays of vaping products

3.1 What are vaping products?

The term “vaping products” describes e-cigarettes and e-liquids. Unlike conventional cigarettes, e-cigarettes do not contain tobacco, do not involve burning and thus do not produce carbon monoxide, tar or smoke. They work by heating a solution of water, flavouring, propylene glycol, and, typically, nicotine to create a vapour that the user inhales. Using an e-cigarette is often described as ‘vaping’ rather than smoking. People usually turn to e-cigarettes as a means to cut back on smoking tobacco, or to quit tobacco completely. Debates on the benefits and risks of e-cigarettes, particularly regarding their safety and health implications, are ongoing.¹⁹

3.2 Current regulation and enforcement

The [Tobacco and Related Products Regulations 2016](#) (TRPRs) implemented the [Tobacco Products Directive](#) (2014/40/EU) into UK law. The Regulations (now retained EU law) set product standards for nicotine vapes including restrictions on maximum nicotine strength, refill bottle and tank size limits, packaging and advertising (including prohibiting advertising on television and radio) in the UK.

Vape packaging can legally come in different colours, styles, and shapes, include brand names and different types of images and formatting. This is in direct contrast to tobacco packaging, which is subject to the [Standardised Packaging of Tobacco Products Regulations 2015](#) and applies standardised packaging to cigarettes and hand rolling tobacco.

The display of vape products can vary significantly. Unlike tobacco products, there are no measures to regulate the display of vaping products in shops in the UK. Branded vaping products with colourful packaging are openly displayed at the point of sale in large and small shops. The Government (and others) have expressed concern about children seeing and easily picking up vapes “due to them being displayed within aisles, close to sweets and

¹⁹ See [Regulation of e-cigarettes](#) (online) (PDF), House of Commons Library briefing, 12 January 2022, (accessed 24 October 2023)

confectionary products and on accessible shelves”.²⁰ They can also be displayed in “eye-catching display towers on the shop floor”.²¹

Selling a nicotine vape to anyone aged under 18 is a criminal offence (Regulation 3, [Nicotine Inhaling Products \(Age of Sale and Proxy Purchasing\) Regulations 2015](#)).²² This includes devices, cartridges, and refill vaping liquids containing nicotine. Local authorities trading standards officers carry out “test purchases”, the offence carries a fine of £2,500. Buying a nicotine inhaling product for anyone under 18 (known as a “proxy sale”) is also a criminal offence.²³

The TRPRs are enforced by local authority trading standards services. In April 2023, the Government announced the [creation of a specialised “illicit vapes enforcement squad”](#) to address the sale of illicit vapes.²⁴

3.3 Rise in youth vaping

As outlined in the command paper, [Stopping the start: our new plan to create a smokefree generation](#),²⁵ there has been a significant rise in youth vaping. The Action on Smoking and Health (ASH) report, [Use of e-cigarettes among young people in Great Britain](#), shows that the number of children using vapes has tripled in the past 3 years with 20.5% of children in Great Britain having tried vaping in 2023.²⁶ There was also a significant growth in awareness of e-cigarette promotion between 2022 and 2023 with more than half of all children (53%) aware of promotion in shops, and nearly a third (32%) online.²⁷ According to the report, only one in five children (20%) say they never see e-cigarettes being promoted (down from 31% in 2022).²⁸

According to the [Northern Ireland Young persons’ behaviour and attitudes survey 2022](#), 21.3% of 11 to 16 year olds in Northern Ireland reported having ever used an e-cigarette.²⁹ A 2022 survey by the Office for Health Improvement and Disparities shows the use of disposable vaping products

²⁰ Department of Health & Social Care, [Stopping the start: our new plan to create a smokefree generation](#), CP 949-I, 4 October 2023 (last updated 12 October 2023)

²¹ As above

²² SI 2015 No. 895

²³ 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](#)

²⁴ [Crackdown on illegal sale of vapes](#) (online), press notice from the Department of Health & Social Care and Neil O’Brien, 9 April 2023, (accessed 24 October 2023)

²⁵ Department of Health & Social Care, [Stopping the start: our new plan to create a smokefree generation](#), CP 949-I, 4 October 2023 (last updated 12 October 2023)

²⁶ [Use of e-cigarettes among young people in Great Britain](#) (online), Action on Smoking and Health (ASH), June 2023 (accessed 24 October 2023)

²⁷ As above

²⁸ As above

²⁹ Department of Health & Social Care, [Stopping the start: our new plan to create a smokefree generation](#), CP 949-I, 4 October 2023 (last updated 12 October 2023)

has increased substantially, with 52.8% of current vapers using them in 2022, compared with 7.8% in 2021 and 5.3% in 2020.³⁰

Due to their nicotine content and the unknown long-term harms caused by vaping, various health charities have raised concerns about the risk to children's health.³¹ There is also concern that youth vaping could act as a "gateway" to tobacco smoking and lifelong addiction.³²

3.4 Recent calls for reform

The [Local Government Association](#) (LGA), the national membership body for local authorities (England and Wales), has raised concerns about the marketing of vapes with designs and flavours that could appeal to young people under 18 (eg fruit and bubble gum flavours). It reports that trading standards teams saw a significant rise in under-age vape sales in 2022:

In a survey by the Chartered Trading Standards Institute, 60 per cent of local trading standards services said high street shops selling illicit vapes or vaping products to children was the enforcement issue that most concerned them.³³

The LGA is campaigning for vapes to be out of sight and out of reach of children:

It is not right that stores are able to prominently display vaping paraphernalia for all to see, such as in a shop window, often in bright, colourful packaging that can appeal to children.

Vapes should only be used as an aid to quit smoking. While research has shown vaping poses a small fraction of the risks of smoking, it is deeply worrying that more and more children – who have never smoked – are starting vaping. The evidence suggests that vaping is by no means risk-free, and so it is very alarming that young people are getting access to and using e-cigarettes.³⁴

The LGA is calling on the Government to strictly regulate the display and marketing of vaping products in the same way as tobacco products, including:

- Requiring vapes to be in plain packaging and kept out-of-sight behind shop counters.

³⁰ Office for Health Improvement and Disparities, [Nicotine vaping in England: 2022 evidence update](#), 29 September 2022, (accessed 24 October 2023)

³¹ Department of Health & Social Care, [Stopping the start: our new plan to create a smokefree generation](#), CP 949-I, 4 October 2023 (last updated 12 October 2023)

³² As above

³³ [Debate on electronic cigarette use, House of Commons, 29 June 2023](#) (online), Local Government Association briefing, 28 June 2023, (accessed 24 October 2023)

³⁴ [Turning the tide on tobacco](#) (online), Local Government Association public health blog, 2023, (accessed 24 October 2023)

- Mandatory age-of-sale signage on vaping products (it is currently voluntary).
- A ban on free samples of vaping products being given out to people of any age.³⁵

The LGA suggests that sanctions for breaching shop display rules for vaping products should be the same as the current penalties for breaching the Tobacco Display Regulations.³⁶

[ASH](#) (Action on Smoking and Health), a public health charity, has also recommended tighter regulation on the marketing and sale of vaping products,³⁷ including:

- A ban on the use of cartoon characters and bright colours on packs.
- A ban on the use of product names or descriptions associated with sweets (eg ‘gummy bears’ and ‘light up’ vapes that glow in the dark).
- A mandatory age verification for anyone who looks under 25.

In addition, ASH has raised concerns about the “glamorous promotion of vaping on social media” and has called on social media platforms to take responsibility.³⁸ Other commentators suggest that vaping can be a gateway to tobacco cigarettes.³⁹

Conversely, the [Independent British Vape Trade Association](#) points out that e-cigarettes are intended for ‘adult smokers’ who want to quit smoking or are looking for a safer alternative to tobacco cigarettes. It is already illegal to sell e-cigarettes to anyone under the age of 18.⁴⁰

3.5 The Government’s position

The Government wants to limit the exposure of children to vapes and keep them out of sight and reach of children.⁴¹ However, at the same time, it does

³⁵ [Keep vapes out of sight of children – LGA on ASH survey on e-cigarette use among 11-to- 17 year olds](#) (online), Local Government Association, 17 May 2023, (accessed 24 October 2023)

³⁶ As above

³⁷ [UK campaigners call for tighter regulations on vapes to match tobacco](#) (online), Guardian, 11 February 2023, (accessed 24 October 2023)

³⁸ As above

³⁹ [There’s a new status symbol for Britain’s teenagers – and its toxic](#) (online), Telegraph, 14 July 2022, (accessed 24 October 2023)

⁴⁰ Independent British Vape Trade Association, [A new study recognises the role reputable vape shops play in reducing smoking](#), (online), 9 February 2018, (accessed 24 October 2023)

⁴¹ Department of Health & Social Care, [Open consultation - Creating a smokefree generation and tackling youth vaping: your views](#) (online), 20 October 2023

not want to inhibit adults who currently smoke tobacco from accessing vapes as a quit aid.⁴²

Call for evidence on youth vaping

On 11 April 2023, the Government launched a [call for evidence on youth vaping](#) to help identify opportunities to reduce the number of children (people aged under 18) accessing and using vape products, while ensuring they remain easily available as a tool to help adults quit tobacco smoking.⁴³ The Government was particularly interested in evidence on how the marketing and brand promotion of vaping products might attract children.

The [call for evidence on youth vaping](#) ran until 6 June 2023. [An analysis of responses](#) was published on 4 October 2023.⁴⁴

Policy paper - 4 October 2023

On 4 October 2023, the Government published [Stopping the start: our new plan to create a smokefree generation](#).⁴⁵ In this policy paper, the Government said it was considering bringing forward legislation on point of sale displays of vaping products in shops. In explaining its policy rationale, the Government drew on analysis from Imperial College London of data collected in the annual ASH survey of youth vaping:

Comparing 12,445 responses to an online survey by children aged between 11 to 18 over the 5 years from 2018 to 2022, [researchers found increases in the proportion of children reporting that they had seen vapes on display in shops](#).

By contrast, tobacco point of sale restrictions in England reduced the exposure of cigarettes in shops to children. The [likelihood of noticing cigarettes decreased from 81% in 2018 to 66% in 2022 for small shops and from 67% to 59% in supermarkets](#). This also coincided with a decrease in buying cigarettes in shops.

The government wants to mirror this trend for vaping, especially since the often-colourful nature of vaping displays appeals to children.

Limiting this exposure is a necessary step to reducing experimental use among children and young people. Legislation is needed to keep vapes out of sight from children. However, we do not want it to inhibit those who currently smoke from accessing vapes as a quit aid so they must remain visible enough. There is strong public support for this. A 2023 ASH public support survey found

⁴² As above

⁴³ Office for Health Improvement and Disparities, [A call for evidence on youth vaping](#) (online), 11 April 2023 (accessed 24 October 2023)

⁴⁴ Office for Health Improvement and Disparities, [Youth vaping call for evidence analysis](#) (online), 4 October 2023, (accessed 24 October 2023)

⁴⁵ Department of Health & Social Care, [Stopping the start: our new plan to create a smokefree generation](#), CP 949-1, 4 October 2023 (last updated 12 October 2023)

that [74% of adults in England support prohibiting point of sale promotion of vapes](#).⁴⁶

The Government said it would bring forward a consultation on measures to tackle youth vaping by reducing the appeal and availability of vapes to children. Following this consultation, the Government said it intends to bring forward legislation “as soon as the Parliamentary timetable allows”.⁴⁷

Consultation - 20 October 2023

As outlined in its command paper, [Stopping the start: our new plan to create a smokefree generation](#),⁴⁸ the Government believes it is important to consult on its proposals to reduce youth vaping to ensure “it gets the balance right between protecting children and supporting adult tobacco smokers to quit”.⁴⁹

On 20 October 2023, the Government published [Creating a smokefree generation and tackling youth vaping](#)⁵⁰ in which it sought views on a set of proposals to tackle youth vaping. A key proposal is to regulate point of sale displays of vaping products in shops, there are two options:

- Option 1: vapes must be kept behind the counter and cannot be on display, like tobacco products.
- Option 2: vapes must be kept behind the counter but can be on display.

The Government has asked for views on which option would be the most effective way to restrict vapes to children and young people (supported by evidence if possible). Those who disagree with both options are asked to give their views on what alternative measures the Government should consider.

The Government is also seeking views on whether specialist vape shops should be exempt from any new display restrictions because they usually hold a wider selection of products. It is also suggested that some vape shops have staff trained by the [National Centre for Smoking Cessation and Training](#) “to offer more tailored advice for smokers wanting to quit”.⁵¹

Other government proposals set in the consultation paper to tackle youth vaping include:

- restricting vape flavours,

⁴⁶ Department of Health & Social Care, [Stopping the start: our new plan to create a smokefree generation](#), CP 949-I, 4 October 2023 (last updated 12 October 2023)

⁴⁷ As above

⁴⁸ Department of Health & Social Care, [Stopping the start: our new plan to create a smokefree generation](#), CP 949-I, 4 October 2023 (last updated 12 October 2023)

⁴⁹ As above

⁵⁰ Department of Health & Social Care, [Open consultation - Creating a smokefree generation and tackling youth vaping: your views](#), 20 October 2023

⁵¹ As above

- regulating vape packaging and product presentation,
- restricting the supply and sale of disposable vapes,
- exploring further restrictions for non-nicotine vapes and other nicotine consumer products such as nicotine patches,
- and action on the affordability of vapes, exploring a new duty on vapes.

The consultation will close on **6 December 2023**.

3.6

Devolved administrations

Health policy is a devolved matter in Scotland, Wales and Northern Ireland. The [Department of Health and Social Care \(DHSC\)](#) in England, the [Directorate for Population Health](#) in Scotland, the [Health and Social Services Group](#) in Wales and the [Department of Health](#) in Northern Ireland are each responsible for improving public health. This includes reducing tobacco use by implementing comprehensive tobacco control strategies and minimising the health risks of youth vaping.⁵²

The legislative proposals in the command paper [Stopping the start: our new plan to create a smokefree generation](#)⁵³ set out an approach for England only, but governments across the UK are consulting on whether they should also take action in the areas outlined in the paper. So, with agreement with the devolved administrations, DHSC is leading this consultation UK-wide.

A summary of the current regulatory position regarding vapes in Scotland, Wales and Northern Ireland is set out below.

Scotland

The Scottish Government consulted in 2014 and in 2015 on proposals to regulate the sale and use of vaping products. Responses informed the [Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act 2016](#), which came into force on 1 April 2017, and introduced new restrictions on the purchase and supply of nicotine vapour products (NVPs) (NVPs include both nicotine and non-nicotine vapes). Specifically, Part 1 of the 2016 Act:

- Introduces the offence of selling a NVP to a person under the age of 18 ([section 2](#)).

⁵² Department of Health & Social Care, [Open consultation - Creating a smokefree generation and tackling youth vaping: your views](#), 20 October 2023

⁵³ Department of Health & Social Care, [Stopping the start: our new plan to create a smokefree generation](#), CP 949-I, 4 October 2023 (last updated 12 October 2023)

- Introduces the offence of failing to operate an age verification policy at premises where tobacco products and NVPs are offered for sale ([section 3](#)).
- Introduces the offence of allowing a tobacco product, cigarette papers or a NVP to be sold by a person under the age of 18 without authorisation ([section 4](#)).
- Provides an enabling power for Scottish Ministers to make regulations to introduce the offence of selling a NVP from a vending machine ([section 7](#)).⁵⁴
- Introduces the offence of carrying on a NVP business whilst unregistered or from unregistered premises ([Section 8](#), [section 9](#) and [section 10](#)).
- Provides for a due diligence defence against certain tobacco product and NVP related offences ([section 5](#)).
- Makes it an offence for a person aged over 18 to purchase a NVP for a person under the age of 18, so called ‘proxy purchase’ ([section 6](#)).
- Provides powers to make regulations containing prohibitions or restrictions on NVP advertisements and brand-sharing and to make related offences ([section 17](#)).
- Provides powers to make regulations prohibiting or restricting giving away a NVP or a coupon for a NVP and to make related offences ([section 18](#)).
- Provides powers to make regulations prohibiting or restricting a sponsorship agreement which promotes NVPs and to make related offences ([section 19](#)).

On 3 February 2022, the Scottish Government consulted on proposals to make regulations under existing powers in the [2016 Act](#) to restrict the advertising and promotion of NVPs.⁵⁵ The proposals included restrictions on advertising, brand-sharing in products and services, free distribution and nominal pricing and sponsorship. The consultation closed on 29 April 2022, and EKOS was commissioned to undertake an independent analysis of responses, a [report](#) was published on 27 September 2022.⁵⁶

On 31 January 2023, there was a [Member’s business debate on motion S6M-07290](#) on “Youth vaping”. During the debate, various members called on the Scottish Government to restrict in-store displays of NVPs. For example, Clare Adamson MSP suggested that “slick promotions, eye-catching displays and

⁵⁴ This would require new regulations to amend [section 9](#) (prohibition of vending machines for the sale of tobacco products) of the [Tobacco and Primary Medical Services \(Scotland\) Act 2010](#) so that it includes vending machines for the sale of NVPs

⁵⁵ Regulations 17 to 19

⁵⁶ Scottish Government, [Vaping products – tightening rules on advertising and promoting: consultation analysis](#) (online), 27 September 2022 (accessed 24 October 2023)

their greater availability compared to traditional tobacco products all lead to a risk of the indoctrination of a generation of young vapers”. Gillian Mackay MSP said, “it is high time that we got rid of the rainbow displays at vape bars, where every flavour under the sun is available”.

However, the [Association of Convenience Stores](#) (ACS), responding to the Scottish Government’s February 2022 consultation, said the implementation of age of sale requirements had significantly reduced youth access to e-cigarettes through retail settings.⁵⁷ The ACS said it did not believe that further restrictions would have a material impact:

We do not believe that limiting use of e-cigarettes to smoking cessation devices only, banning instore displays, posters or leaflets, will have a material impact on youth access to e-cigarettes. We believe that existing processes and procedures are having a positive impact on preventing youth access to e-cigarettes. We believe that implementation of the Challenge 25 age verification policy is essential in preventing youth access. At the beginning of 2022, ACS launched a campaign to promote the application of Challenge 25 across all age restricted products in the convenience sector and produced new materials for use in store. Awareness of Challenge 25 among the general public is strong, with 7 in 10 consumers currently aware of what the Challenge 25 policy is for.⁵⁸

Wales

In Wales, the [Public Health \(Wales\) Act 2017](#) introduced regulatory making powers to introduce a national register of retailers of tobacco and nicotine products (including vapes). In addition, the Act prohibits the use of vapes in enclosed public spaces (such as restaurants, bars and workplaces), banning vaping in line with tobacco smoking restrictions. The stated aim being to protect public health and prevent the normalisation of smoking behaviours.

Northern Ireland

In Northern Ireland, the [Health \(Miscellaneous Provisions\) Act \(Northern Ireland\) 2016](#) prohibits:

- The sale of nicotine products to persons under 18.
- The sale of nicotine products from vending machines.
- The use of nicotine products in a private vehicle.

For the purposes of the Act, a “nicotine product” would include a nicotine vape.

⁵⁷ [ACS Submission: Tightening rules on advertising and promoting vaping products](#) (PDF), Association of Convenience Stores, undated, (accessed 24 October 2023)

⁵⁸ As above

4 Parliamentary debates on youth vaping

Recently, there have been several Parliamentary debates on the rise in youth vaping. MPs from all parties have raised concerns about how colourful packaging and in-store displays of vapes impact on children.

For example, on 29 June 2023, during a [Westminster Hall debate on e-cigarette use](#),⁵⁹ Dr Caroline Johnson MP described the appeal of vaping products:

Walk into any corner shop and we can see a whole rainbow from which to choose. There are understandable concerns that some manufacturers are deliberately doing that. They would all deny it, of course, and I hope that it is not the case, but with flavours such as unicorn milkshake, bubble gum, candy floss and green Gummy Bear, it is clear that these things are far too attractive to children. I ask the Minister to consider whether, if these are truly stop-smoking devices and not lifestyle products that are attractive to children, they really need to be coloured and flavoured. I do not think they do.⁶⁰

Gavin Newlands MP also highlighted the colourful branding, flavours that imitate confectionary, and social media platforms that appear to glamorise vapes. He suggested that such tactics could “lead to misinformation about the dangers of vaping among the younger generations”.⁶¹

Wes Streeting MP, Shadow Secretary of State for Health and Social Care, went much further in arguing that the vaping industry were targeting children:

I share the deep concerns that Members have expressed about the impact that the vaping industry is having on children, because it is not targeting children to get them off cigarettes, but to get them on nicotine. I do not care what the industry leaders told the Health and Social Care Committee yesterday; frankly, they are insulting the public’s intelligence. If someone walks down pretty much any high street in our country today, they will be able to buy brightly coloured vapes and e-liquids with names such as Vimto Breeze, Mango Ice, or indeed Unicorns. There is no doubt that these products are being designed, packaged, marketed and sold deliberately to children.⁶²

Neil O’Brien, the Parliamentary Under-Secretary of State for Health and Social Care, said the Government’s message was clear: vapes should not be used by people under the age of 18.⁶³

⁵⁹ [HC Deb 29 June 2023 c181-195WH](#)

⁶⁰ [HC Deb 29 June 2023 c183WH](#)

⁶¹ [HC Deb 29 June 2023 c188WH](#)

⁶² [HC Deb 29 June 2023 c189-190WH](#)

⁶³ [HC Deb 29 June 2023 c191-194WH](#)

On 12 July 2023, Andrew Gwynne MP introduced a House of Commons debate on [under-age vaping](#).⁶⁴ On the issue of shop displays and their appeal to children he said:

What does that promotion look like? If hon. Members walk down any high street in the country and pop into a vaping shop or off-licence, they will see it at first hand. Brightly coloured e-liquids with names such as “blue razz”, “cherry cola” or “vampire vape” line the shelves. Some liquids are even designed to imitate well-known brands. We can find “Len & Jenny’s mint Oreo cookie” alongside “pick it mix it sherbet lemons”. In fact, it really is not an exaggeration to say that some stores selling vapes resemble old fashioned sweet shops, with pretty much any flavour we can think of covered in cartoon-led packaging. Let us make no mistake, this is not packaging marketed towards adults. It is deliberately designed to appeal to children and, most concerningly, it appears to be working.⁶⁵

Other Members also commented on the promotion of vapes in shops. For example, Kirsten Oswald MP said:

I recently visited a vaping shop near to where I live. I know they are sold in other outlets too, in corner shops and supermarkets, on Amazon and eBay, and we have heard about them being sold in a barbershop as well. They are not difficult to find, and they are so inviting. When I went into the shop, it looked lovely: the display was beautiful, with nice colours and names and all kinds of fancy shapes that looked like highlighters or lipsticks. I have seen some online that look like brightly coloured fidget spinners. These things are quite enticing, are they not? They are very attractive, and that is obviously deliberate.⁶⁶

Steve Brine MP argued that the industry had not gone far enough in ensuring its products do not appeal to young people:

Shops are able to display wide ranges of vapes in colourful, flavoured varieties and in locations that do not usually sell similar products: for example, we heard about vapes being sold in chicken shops and pound shops. That is in sharp contrast to tobacco products, which must be locked away and packaged in standardised plain packaging containing health warnings.⁶⁷

Helen Hayes MP called on the Government to introduce stricter regulation on the display and marketing of vaping products:

What is true for the strategy to tackle smoking is true for the challenge of vaping. Without much tougher regulation, we will not succeed in driving down vaping among children and young people. Regulations on packaging, advertising and labelling are essential. Labour is calling on the Government to ban vapes from being branded and advertised to appeal to children, and to work with local councils.⁶⁸

⁶⁴ [HC Deb 12 July 2023 c410-457](#)

⁶⁵ [HC Deb 12 July 2023 c410](#)

⁶⁶ [HC Deb 12 July 2023 c421-422](#)

⁶⁷ [HC Deb 12 July 2023 c425-426](#)

⁶⁸ [HC Deb 12 July 2023 c452](#)

Alex Cunningham MP urged the Government to commit to bringing forward legislation to ban not just the child-friendly branding of vapes, but their in-store promotion:

[...] promoting vapes to adults as a quitting aid should not go hand in hand with the dreadful marketing of vapes to children. Requiring standardised packaging for vapes is essential, and the Government can be reassured that that has strong public and political support. Indeed, it may not be a political issue, because Members across the House support it. The overwhelming majority of the public would like us to go further and ban all advertising and promotion in shops, which is currently unregulated.

When I walk into shops in my local constituency – I am sure I am not alone in this – e-cigarettes are promoted everywhere. As others have said, vapes are thrust in children's faces in all kinds of shops, at the till or by the sweets, which is totally unacceptable.⁶⁹

The Parliamentary Under-Secretary of State for Health and Social Care, Maria Caulfield, acknowledged the recent rise in teenagers using vapes and suggested there were multiple reasons for that, including packaging, naming and flavouring. However, to avoid unintended consequences on adults who want to quit tobacco smoking, she said the Government would take its time before making decisions to further regulate vapes. Referring to the Government's [call for evidence on youth vaping](#) (April 2023),⁷⁰ the Minister said the Government was taking an evidence-based approach:

[...] we are committed to taking strong and assertive action to tackle youth vaping, and we are willing to go further as part of our evidence-based approach. We have to work with all parties and across Government. This is not just a health issue: it is an issue for the Department for Education, for the Department for Culture, Media and Sport in terms of advertising, and for DEFRA in respect of how single use vapes are disposed of.

We are committed to effectively tackling the issue and driving down youth vaping rates, while making sure that vapes are available to smokers as an effective aid to quitting smoking. We are committed to doing all we can to prevent children from starting vaping and we are actively working on ways that we can go further.⁷¹

On 3 September 2023, Helen Hayes MP spoke on a motion for leave to bring in a Bill to make provision about the branding, promotion and advertising of e-cigarettes, for the purpose of preventing vapes from being marketed in a way which appeals to children.⁷² On the specific issue of shop displays she said:

In every single one of the constituencies we represent, on high streets and in town centres up and down the country, there are vaping shops where the shelves and window displays are filled with brightly coloured packaging and products. The packaging mimics popular brands, with flavours of sweets like

⁶⁹ [HC Deb 12 July 2023 c447-448](#)

⁷⁰ Office for Health Improvement and Disparities, [A call for evidence on youth vaping](#) (online), 11 April 2023 (accessed 24 October 2023)

⁷¹ [HC Deb 12 July 2023 c456](#)

⁷² Motion for leave to bring in a Bill (Standing Order No.23)

gummy bears, Skittles and tutti-frutti, or soft drinks like cherry cola, or emblazoned with images of cartoon characters. The problem is just as widespread online, with vapes being openly promoted to children on social media sites, drawing them into experimental vaping so that they become addicted to nicotine. The marketing strategy is clear to see: the products are designed to be attractive to children, to draw them in when they are very young so that they will become addicted to vaping and then become long-term customers.⁷³

⁷³ [HC Deb 3 September 2023 c243-245](#)

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