

Research Briefing

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Advertising, marketing and promotion of vaping products



Summary

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Summary

This briefing covers the advertising, marketing and promotion of vaping products in England. It outlines current restrictions under both the [Tobacco and Related Products Regulations 2016](#) (TRPRs) and the [Advertising Codes](#) and their enforcement. It also considers calls for tighter regulation and recent government initiatives. However, this briefing does not include any assessment of the health arguments for and against the use of vaping products.

Health policy is a devolved matter in Scotland, Wales and Northern Ireland. However, the UK Government said it is committed to working closely with the devolved administrations as it develops proposals to tighten the regulation of vaping products. It hopes to align policy approaches where this would improve outcomes and continue [“ongoing collective action” to tackle youth vaping across all parts of the UK.](#)

What are vaping products and how many adults use vapes?

Vaping products are e-cigarettes and e-liquids. 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 described as “vaping” rather than smoking. E-cigarettes are usually used to help people quit smoking tobacco, they can be reusable or disposable.

Vapes are now a commonplace consumer product. According to a series of [independent reports on vaping](#) commissioned by the Office for Health Improvement and Disparities in the Department of Health and Social Care, the prevalence of adults using nicotine vapes in England in 2021 was between 6.9% and 7.1% (depending on the survey), which equates to between 3.1 and 3.2 million adults. The popularity of disposable nicotine vapes has significantly increased, with 15.2% of adults who vape using them in 2022 compared with 2.2% in 2021. However, refillable tank type products remain the most popular vaping devices, used by 64.3% of adult vapers in 2022.

How are vaping products regulated?

There have been significant regulatory changes related to the sale of vapes. On 20 May 2016, the TRPRs implemented the [Tobacco Products Directive \(2014/40/EU\)](#) (PDF) into UK law.

The TRPRs (now retained EU law) impose product standards for nicotine vapes. These include restrictions on maximum nicotine strength, refill bottle and tank size limits, and packaging (including a mandatory health warning). Importantly, the Regulations prohibit in certain media the advertising of nicotine-containing e-cigarettes and e-liquids sold as consumer goods (ie

vapes not licensed with the [Medicines and Healthcare Products Regulatory Agency](#)).

The [TRPRs](#) do not apply to vapes that do not contain nicotine. These are covered by the [General Products Safety Regulations 2005](#). As with other consumer products, suppliers of e-cigarettes and e-liquids must ensure that only safe products are placed on the market, together with any necessary warnings for the safe use of the product.

Advertising, marketing and promotion

This increase in the use of vaping products has been matched by a growth in advertising, marketing and promotion. Brightly coloured packaging is used to promote branded vapes in shop displays and a wide range of e-liquid flavours are available, such as chocolate, cheesecake and fizzy drink flavoured vapes.

In addition to the [TRPRs](#), rules on the advertising, marketing and promotion of vaping products are set also out in the Advertising Codes, both the [Non-broadcast CAP Code](#) and the [Broadcast BCAP Code](#). The [Advertising Standards Authority](#) (ASA), an independent regulator, has responsibility for ensuring adverts across UK media comply with the Codes.

Various organisations, including the Local Government Association which represents councils in England and Wales, are calling for vaping products to be [sold in plain packaging and kept out-of-sight behind the counter](#).

Health and environmental considerations

There is ongoing public debate among health professionals, charities, manufacturers and businesses about the potential benefits and risks of using vaping products.

There is a wide range of views, from those who underline the importance of vapes as a less harmful alternative to tobacco and as a tool to help people to quit smoking, to those who raise concerns about the increasing number of children who use nicotine vapes and the unknown long-term harm to their health and the risk of addiction. Others have warned that the rise in single use disposable vapes is causing environmental damage.

Reducing vaping by children and young people

It is an offence to sell nicotine vapes to people aged under 18. However, a survey by the charity Action on Smoking and Health (ASH) on the [use of e-cigarettes among young people in Great Britain](#), found that in March/April 2023, the proportion of children experimenting with vaping had grown by 50% year on year, from one in 13 to one in nine. Children's awareness of the marketing of vapes has also grown. More than half of all children reported seeing vapes promoted in shops, and nearly a third reported seeing promotions online. According to ASH, only one in five children now say they have never seen vapes promoted, down from 31% in 2022.

There is also concern that children are accessing illegal vapes. Some [illegal vapes have been found to contain high levels of lead, nickel and chromium](#).

Government action

On 11 April 2023, the Government launched a [call for evidence](#) to help identify opportunities to reduce the number of children accessing and using vaping products, while ensuring they are still easily available to help adults to quit smoking.

In June 2023, the [Health and Social Care Committee](#) examined options to restrict children's access to vapes, such as banning products that use flavours or bright coloured packaging and better enforcement of the age restriction on nicotine vape sales. Price increases were also considered.

On 4 October 2023, the Government published a policy paper, [Stopping the start: our new plan to create a smokefree generation](#). This was followed by the publication of a consultation paper on 20 October 2023, [Creating a smokefree generation and tackling youth vaping: your views](#). To reduce youth vaping, the Government sought views on the following proposals:

- restricting vape flavours
- regulating vape packaging and product presentation
- regulating point of sale displays
- restricting the sale of disposable vapes
- introducing an age restriction for non-nicotine vapes
- preventing industry giving out free samples of vapes to children

The Government believes these proposals form “a suite of measures that will work together to reduce the various ways that vapes appeal to children”. The Government is currently considering responses to the consultation.

In the [King's Speech](#) on 7 November 2023, the Government announced its intention to introduce a tobacco and vapes bill. This bill would raise the minimum age of sale for tobacco products by one year each year, to phase out cigarette smoking, and restrict the sale and marketing of e-cigarettes.

1

Vaping industry: advertising & marketing strategies

E-cigarettes and e-liquids are relatively new consumer products, but the market is fast-moving. According to a [report commissioned by the UK Vaping Industry Association \(UKVIA\)](#), turnover within the UK vape sector as a whole grew by 23.4% from 2017 to 2021, an increase of £251m, and stood at £1.325bn in 2021.¹ Noticeably, between 2017 and 2020, the number of vape shops in the UK has increased from 2,280 to 3,650, approximately a 61% increase.² At the same time, vapes are easily available in convenience stores and in supermarkets. Several major retailers across the UK are introducing their own e-cigarette brands to meet this growing demand.³

The size of the UK e-cigarette market is predicted to grow at a compound annual growth rate (CAGR) of 13.3% between 2023 and 2028.⁴ The market size is forecast to increase by \$1.61 billion, with online sales driving this market growth.⁵ Evidence suggests that consumers prefer the convenience of online shopping.⁶

Within this dynamic market, brands compete to increase their market share. Marketing strategies for vaping products vary but include:

- Promoting an array of appealing e-liquid flavours (eg cheesecake, apple pie, cookies, peanut butter, butterscotch, chocolate, tropical fruit, coconut, ice cream, sherbet, and lemonade flavours).
- Using brightly coloured packaging and imagery.
- Using distinctive packaging features (eg a cuboid box or ultra slim rectangular box).
- Using exciting product names (eg The Shocker, Sucker Punch, Titan, Patriot, and Blood Sukka).

¹ [Economic impact assessment of the vaping industry – A Centre for Economics and Business Research \(Cebr\) report for the UK Vaping Industry Association](#) (online), UK Vaping Industry Association (UKVIA), September 2022, (accessed 15 December 2023)

² As above

³ [UK – E-cigarette Market by Distribution Channel, Product and Gender – Forecast and Analysis 2024-2028](#) (online), Technavio, November 2023, (accessed 15 December 2023)

⁴ [UK – E-cigarette Market by Distribution Channel, Product and Gender – Forecast and Analysis 2024-2028](#) (online), Technavio, November 2023, (accessed 15 December 2023)

⁵ As above

⁶ As above

- Having dominant shop displays, with vape companies taking full advantage of the opportunity to market in retail environments.

As a marketing strategy, some manufacturers also give away free samples of disposable nicotine and nicotine-free vapes. In addition, pricing strategies may increase market share (for instance, offering online consumers VIP e-cigarette discount codes).

In the UK, restrictions on the marketing of vaping products came into force in 2016 with the introduction of the [Tobacco and Related Products Regulations](#) (TRPRs). Under these Regulations, advertising nicotine e-cigarettes on television, radio, online or in print is illegal. Advertising on outdoor posters and billboards is permitted, but content is subject to [Advertising Codes](#) enforced by the ASA. However, in recent years there have been calls for stricter controls.

The [Local Government Association](#) (LGA) and various health charities have raised concerns that e-cigarettes are being marketed in a way that makes them attractive to children.⁷ In particular, it is suggested that flavour names (such as gummy bear and candy floss) along with branding (ie the use of brightly coloured packaging) can make vapes appealing to children. The LGA also suggests that flavours can make “vapes appear harmless”.⁸

Further detailed information about the current regulatory regime governing the advertising, marketing and promotion of vaping products is set out below.

⁷ [Legislating to create a smokefree generation: LGA consultation response](#) (online), Local Government Association, 1 December 2023, (accessed 15 December 2023)

⁸ As above

2

Current regulatory framework

To date, UK government policy has been to facilitate two routes to market for vapes, the consumer and medicinal routes. In effect, manufacturers can either market e-cigarettes as a consumer product or apply for a licence to market their product as a medicine (regulated by the [Medicines and Healthcare Products Regulatory Agency \(MHRA\)](#)). Currently, all vaping products are supplied to market through the consumer route, there are no medicinally licensed vaping products.

As products, nicotine and non-nicotine vapes are similar in that they can be sold in liquid form to be used in a device or can be bought with the liquid already contained in a device. However, for the purposes of regulation, a distinction is made between the two types of vapes.

2.1

Nicotine containing vaping products

Minimum age of sale

The majority of vapes sold in the UK contain nicotine. Under the [Nicotine Inhaling Products \(Age of Sale and Proxy Purchasing\) Regulations 2015](#), selling a nicotine inhaling product to anyone aged under 18 is a criminal offence (Regulation 3).⁹ This includes devices, cartridges, and refill vaping liquids containing nicotine. Buying a nicotine inhaling product for anyone under 18 (known as a 'proxy' sale) is also a criminal offence.¹⁰

Trading Standards carry out spot checks on shops and test purchasing. The offence of selling nicotine vapes to children carries a fine of £2,500.

Regulation under the TRPRS

The [TRPRS](#) set out a regulatory framework for all nicotine-containing e-cigarette products sold as consumer goods.¹¹ The Regulations, which came into force on 20 May 2016, do not apply to nicotine free vaping products.

The [TRPRS](#) were subsequently amended by the [Tobacco Products and Nicotine Inhaling Products \(Amendment\) \(EU Exit\) Regulations 2020](#) to ensure that tobacco control continued effectively in Great Britain and Northern Ireland

⁹ SI 2015 No. 895

¹⁰ 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](#)

¹¹ SI 2016 No.507

after the UK's departure from the EU.¹² The TRPRs (as amended) extend to all of the UK.

The [TRPRs](#) (Part 6) impose **reporting and notification requirements** on producers of nicotine containing e-cigarettes and refills prior to their placement on the UK market.¹³ The MHRA is the competent authority for the notification scheme in Great Britain and Northern Ireland.

In addition, the TRPRs include rules to ensure:

- minimum standards for the safety and quality of all e-cigarettes and refill containers (otherwise known as e-liquids),
- that information is provided to consumers so that they can make informed choices (health claims and discounts are prohibited from appearing on packs), and
- an environment that protects children from starting to use these products.

Detail on product requirements imposed by the Regulations (including a cap on nicotine levels and labelling requirements) is outlined in a separate briefing, [The Regulation of e-cigarettes](#) (PDF).¹⁴

Advertising restrictions

Under the [TRPRs](#) there are prohibitions on which channels can be used to advertise nicotine-containing e-cigarettes and liquids sold as a consumer product in the UK, including:

- On television and on-demand television (implemented through the [BCAP Code](#) and the [Broadcast Code](#)).
- On the radio (implemented by the [BCAP Code](#) and the [Broadcast Code](#)).
- Through television and on-demand television product placement (implemented by the [Communications Act 2003](#) as amended by the Tobacco Regulations).
- Through sponsorship of television and radio programmes intended to promote e-cigarettes or an event.
- Through information society services (this includes, for example, internet advertising and commercial email).

¹² SI 2020 No. 1316

¹³ The [Medicines and Healthcare Products Regulatory Agency](#) (MHRA) is the competent authority for a notification scheme for nicotine containing e-cigarettes and refill containers in Great Britain and Northern Ireland

¹⁴ [The Regulation of e-cigarettes](#) (PDF) (CBP 8114), House of Commons Library, 27 June 2023, see section 3

- In certain printed publications, such as newspapers, magazines, periodicals and similar publications (except trade publications).

However, advertising is permitted, subject to the rules set out in the CAP and BCAP Codes, for:

- Non-nicotine disposable e-cigarettes (not able to be refilled).
- Non-disposable e-cigarettes designed to only take cartridges with non-nicotine containing fluid.
- Non-nicotine liquids.
- Medicinal products (subject to separate medicines advertising legislation).

Crucially, such products must not directly or indirectly promote nicotine containing vaping products.

Compared to tobacco products, where all forms of advertising and sponsorship are prohibited, the restrictions imposed by the TRPRs on nicotine-containing vapes and liquids are more limited.

Provision of product information

The [TRPRs](#) do not prevent the provision of information by a retailer or manufacturer about a product at the request of a consumer. According to [government guidance](#),¹⁵ ‘information’ provided to consumers might include: price, instructions for use, ingredients, flavour, nicotine content, and description of the product components (including, where applicable, the opening and refill mechanism).

However, this information must be provided in a non-promotional manner. This would be a ‘matter of fact’ and context in each case, but as a guide, the Government has said it would consider the following to be ‘promotion’ rather than ‘information’:

- highlighting price promotion,
- using additional imagery that is not of the product,
- using celebrity endorsement,
- using overly descriptive language that describes products in a way that cannot be objectively substantiated, and

¹⁵ Department of Health & Social Care, [Guidance – Article 20\(5\), Tobacco Products Directive: restrictions on advertising electronic cigarettes](#), 20 May 2016

- comparative information with other e-cigarette products or the general market (whether or not they can be substantiated).¹⁶

2.2 Non-nicotine containing vaping products

Currently, there are three categories of non-nicotine vapes:

- short and long fill vapes,
- disposable (single use) vapes, and
- alternative vapes (sometimes advertised as “wellness vapes”).

Minimum age of sale

The age restrictions imposed by the [Nicotine Inhaling Products \(Age of Sale and Proxy Purchasing\) Regulations 2015](#) do not apply to nicotine-free vaping products. However, in May 2023, the Prime Minister announced a commitment to review the rules on selling nicotine-free vapes to under 18s.¹⁷

Regulation under the GPSRs

The [TRPRs](#) do not apply to non-nicotine containing vapes. Instead, they are covered by the [General Products Safety Regulations 2005](#) (the GPSRs). As with other consumer products, suppliers of e-cigarettes and liquids must ensure that only safe products are placed on the market, together with any necessary warnings for the safe use of the product.

Advertising

Advertising for non-nicotine vapes is permitted (subject to the rules set out in the ASA Advertising Codes) for:

- Non-nicotine e-liquids.
- Non-nicotine disposable e-cigarettes (not able to be refilled).
- Non-disposable e-cigarettes designed to only take cartridges with non-nicotine containing fluid.

For these vaping products, advertising can lawfully appear in any medium but must not indirectly promote nicotine containing products.

¹⁶ As above

¹⁷ [No more free vapes for kids](#) (online), press notice by the Department of Health and Social Care, The Rt Hon Rishi Sunak MP and Neil O'Brien MP, 30 May 2023, (accessed 15 December 2023)

2.3 Free samples: nicotine & non-nicotine vapes

Currently, in England there is no restriction on marketing firms giving away free samples of nicotine or non-nicotine vapes to children and young people (those under 18). In direct contrast, the free distribution of tobacco products is prohibited under the [Tobacco Advertising and Promotion Act 2002](#).

In May 2023, the Prime Minister, Rishi Sunak, said the Government would “close this legal loophole” at the next legislative opportunity.¹⁸ The Chief Medical Officer, Professor Chris Whitty, argued that children should not be encouraged to start vaping:

There has been a particularly worrying rise in the number of children using vapes, with companies clearly marketing these products at children using colours, flavours and cheap disposable options.

Closing the loophole that allows companies to give out free samples of vaping products to under 18s is a very welcome step in tackling some of the harms caused by the vaping industry.¹⁹

The [Independent British Vape Trade Association](#) (IBVTA) supported the Prime Minister’s decision:

The loophole allowing free samples to be distributed regardless of consumer age is a gap that no self-respecting business should ever have considered exploiting. The IBCTA applauds the announcement that such activity will soon be illegal.²⁰

2.4 Compliance and enforcement

Trading Standards

Regarding nicotine vaping products, the majority of the [TRPRs](#) are enforced by local authorities Trading Standards officers (or Environmental Health officers in Northern Ireland).

Regarding nicotine free vaping products, the [GPSRs](#) are enforced jointly by Trading Standards and the [Office of Product Safety and Standards](#) (OPSS). These bodies have the power to prosecute companies for placing unsafe products on the market.

The rules for advertising e-cigarettes are enforced by the same agencies which currently enforce the rules on tobacco advertising. [Ofcom](#) enforce the rules for broadcast media and trading standards enforce the non-broadcast

¹⁸ As above

¹⁹ As above

²⁰ As above

media rules with the [Advertising Standard Authority](#) (ASA) undertaking a first line self-regulatory check on the industry.

Enforcement squad

On 11 April 2023, during a speech at the Policy Exchange, the Health Minister Neil O’Brien announced a new “illicit vapes enforcement squad” led by Trading Standards to enforce the rules on vaping and to tackle illicit vapes and underage sales.²¹ The expectation is that this new squad, supported by £3 million of government funding, will also tackle online shops selling illicit vapes to under 18s.

Describing the remit of this new enforcement squad, Neil O’Brien said it would “share knowledge and intelligence across regional networks and local authorities”.²² It would undertake specific projects (such as test purchasing in convenience stores and vape shops) and have the power to remove illegal products from shops and at borders. Importantly, it would be expected to produce guidance on regulatory compliance. The Minister said:

The new illicit vapes enforcement squad will work across the country and clamp down on those businesses who sell vapes to children – which is illegal – and get them hooked on nicotine.²³

Additional funding for enforcement agencies

The Government has committed to providing £30 million additional funding each year (from April 2024) to support enforcement agencies such as trading standards, Border Force and HMRC. This additional funding is to be used to implement and enforce the law (including underage sales) and tackle illicit trade.²⁴

²¹ [Crackdown on illegal sale of vapes – Bold new measures to combat rising levels of youth vaping expected to be announced](#) (online), Department of Health & Social Care and Neil O’Brien MP press notice, 9 April 2023, (accessed 15 December 2023)

²² As above

²³ As above

²⁴ As above

3 Regulation under the Advertising Codes

3.1 Overview

In addition to regulation under the [TRPRs](#) and the [GPSRs](#), rules on the advertising of e-cigarettes are set out in the [UK Advertising Codes](#) enforced by the [Advertising Standards Authority](#) (ASA), an independent regulator.

All non-broadcast advertising in the UK must comply with the [UK Code of Non-broadcast Advertising and Direct & Promotional Marketing](#) (CAP Code). Specifically, the CAP Code applies to:

- Advertisements in newspapers, magazines, brochures, leaflets, circulars, mailings, e-mails, text transmissions (including SMS and MMS), fax transmissions, catalogues, follow-up literature and other electronic or printed material.
- Posters and other promotional material in public places, including moving images, except where they appear unlawfully.
- Cinema, video, DVD and Blu-ray advertisements.
- Advertisements in non-broadcast electronic media, including but not limited to: online advertisements in paid-for space (including banner or pop-up advertisements and online video advertisements; paid-for search listings; preferential listings on price comparison sites; viral advertisements; in-game advertisements; commercial classified advertisements; advergames that feature in display advertisements; advertisements transmitted by Bluetooth; advertisements transmitted through web widgets; and online promotions and prize promotions.
- Marketing databases containing consumers' personal information.
- Promotions in non-broadcast media.
- Advertorials.
- Advertisements and other marketing communications by or from companies, organisations or sole traders on their own websites, or in other non-paid for space online under their control, that are directly connected with the supply or transfer of goods, services, opportunities and gifts, or which consist of direct solicitations of donations as part of their own fund-raising activities.²⁵

²⁵ [Scope of the CAP Code](#) (online), Advertising Standards Authority, undated, (accessed 20 December 2023)

The [UK Code of Broadcast Advertising](#) (BCAP Code) sets out regulations for broadcast advertising. The BCAP Code applies to all advertisements (including teleshopping, content on self-promotional television channels, television text, and interactive television ads) and programme sponsorship credits on radio and television services licensed by Ofcom. It applies to:

- all Ofcom-licensed broadcasters on television channels and radio stations, to Sianel Pedwar Cymru (S4C) and S4C digital (including teleshopping channels), and
- to any additional television service (including television text services and interactive television services).

Broadcasters are required by the terms of their Ofcom licence, and, for S4C, by statute, to observe the standards set out in the BCAP Code.

The CAP and BCAP Codes are designed to ensure that advertising across all media is “legal, decent, honest and truthful”, does not “mislead, harm or offend” and is prepared with “a due sense of social and professional responsibility”. Both Codes include more prescriptive rules for sensitive products, such as alcohol, tobacco, medicines and e-cigarettes.

Following consultation in September 2016,²⁶ new rules on the advertising of e-cigarettes were added to the codes. [Rule 22](#) of the CAP Code and [rule 33](#) of the BCAP Code are designed to ensure that e-cigarette advertising is ‘socially responsible’ with particular regard to:

- protecting young people,
- clearly informing consumers about the nature of the product,
- not making medicinal claims,
- not creating confusion between e-cigarettes and tobacco, and
- not encouraging people who do not smoke and non-nicotine users to use e-cigarettes.

The ASA has published guidance on [Electronic cigarette advertising prohibitions \(non-broadcast and broadcast\)](#) (31 January 2017).

The ASA investigates complaints from the public and rulings are made by the independent ASA Council. If the ASA upholds a complaint, the marketing communication must be withdrawn or amended. Where an advertiser is unwilling to comply, sanctions for breach of the Codes might include the ASA:

²⁶ [CAP’s Response to the Tobacco and Related Products Regulations 2016](#) (online), Advertising Standards Authority, CAP News, 20 May 2016, (accessed 15 December 2023)

- Adding the name of the marketer and details of the problem with the advert to a [dedicated section](#) of the ASA website until the ad complies.
- Issuing [Ad Alerts](#) to its media owner members, advising them to withhold services such as access to advertising space.
- Asking its members to revoke, withdraw or temporarily withhold recognition and trading privileges (eg Royal Mail might withdraw its bulk mail discount, making it prohibitively expensive to run a direct marketing campaign).
- Asking its poster industry members to invoke mandatory pre-vetting for advertisers who persistently break the CAP Code on grounds of taste and decency or social responsibility (this pre-vetting can last for 2 years).
- Asking search engines to remove paid-search ads when those ads contain material – or a link to a page on the marketer’s website that contains material – which breaks the rules.
- Placing its own paid-search ads to highlight the advertiser’s name and non-compliance with the codes.
- Asking its members to disqualify from industry awards any ads that break the CAP Code.

Ultimately, the ASA can refer the case to Trading Standards or to Ofcom.

3.2

Non-broadcast CAP code: e-cigarette advertising rules

Rule 22 of the CAP Code (reproduced in **Box 1**) governs the non-broadcast advertising of e-cigarettes and e-liquids sold as consumer products. Rule 22 reflects the advertising prohibitions contained in the TRPRs. In terms of scope, **rules 22.1 to 22.11** apply to marketing communications for e-cigarettes and related products whether or not they contain nicotine. **Rule 22.12** relates only to unlicensed, nicotine containing products.

1 Rule 22 of the CAP Code

The [CAP Code](#) applies to non-broadcast advertisements, sales promotions and direct marketing communications (eg advertisements in print, in cinemas, on outdoor posters, online, SMS, and direct mail).

[Rule 22](#): rules around e-cigarettes:

22.1 Marketing communications for e-cigarettes must be socially responsible.

22.2 Marketing communications must contain nothing which promotes any design, imagery or logo style that might reasonably be associated in the audience's mind with a tobacco brand.

22.3 Marketing communications must contain nothing which promotes the use of a tobacco product or shows the use of a tobacco product in a positive light. This rule is not intended to prevent cigarette-like products being shown.

22.4 Marketing communications must make clear that the product is an e-cigarette and not a tobacco product.

22.5 Marketing communications must not contain health or medicinal claims unless the product is authorised for those purposes by the MHRA. E-cigarettes may be presented as an alternative to tobacco, but marketers must do nothing to undermine the message that quitting tobacco use is the best option for health.

22.6 Marketers must not use health professionals to endorse electronic cigarettes.

22.7 Marketing communications must state clearly if the product contains nicotine. They may include factual information about other product ingredients.

22.8 Marketing communications must not encourage non-smokers or non-nicotine-users to use e-cigarettes.

22.9 Marketing communications must not be likely to appeal particularly to people under 18, especially by reflecting or being associated with youth culture. They should not feature or portray real or fictitious characters who are likely to appeal particularly to people under 18. People shown using e-cigarettes or playing a significant role should not be shown behaving in an adolescent or juvenile manner.

22.10 People shown using e-cigarettes or playing a significant role must neither be, nor seem to be, under 25. People under 25 may be shown in an incidental role but must be obviously not using e-cigarettes.

22.11 Marketing communications must not be directed at people under 18 through the selection of media or the context in which they appear. No medium should be used to advertise e-cigarettes if more than 25% of its audience is under 18 years of age.

22.12 Except for media targeted exclusively to the trade, marketing communications with the direct or indirect effect of promoting nicotine-containing e-cigarettes and their components which are not licensed as medicines are not permitted in the following media:

- Newspapers, magazines and periodicals
- Online media and some other forms of electronic media

Under **rule 22.12**, e-cigarettes (and e-liquids) containing nicotine and not licensed as medicines (a definition which includes most products on the market) cannot be advertised in print media or online. Print media would include newspapers, magazines and periodicals. The prohibition of online advertising is comprehensive, but factual information about e-cigarette products is permitted on an e-cigarette brand's website or, in certain

circumstances, in other non-paid for space online under the marketer’s control.²⁷ However, this information must only be factual and not promotional in nature, the position is set out in [Advertising guidance](#).²⁸ In effect, the ASA must discern between prohibited “promotional” material and permitted “factual” material in this context.

In recent years there has been concern that social media was being used as a core part of the “marketing mix” for e-cigarette brands. In December 2019, the ASA ruled against British American Tobacco concluding that a public Instagram account was not analogous to a brand’s website, “as the content could be pushed to other users without them seeking it out or providing option consent”.²⁹ For the ASA, the position was clear: public Instagram accounts providing promotional or factual content about e-cigarettes or liquids are not permitted, though factual content on private accounts remains allowed.³⁰ Following this ruling, Instagram announced at the close of 2019, that they were banning ‘influencers’ from promoting vaping products. Similarly, Facebook stated that they would no longer allow adverts that promoted the sale or use of electronic cigarettes.

The scope of the prohibition in rule 22 only extends to adverts for unlicensed, nicotine containing e-cigarettes and liquids appearing in newspapers, magazines, periodicals, and online. Adverts for these products may appear in other media (subject to CAP rules about content and placement), including on an outdoor poster, in a leaflet and in the cinema.

Under rule 22, marketers can continue to advertise non-nicotine e-cigarettes and liquids (subject to CAP rules about content and placement) in non-broadcast media. However, such adverts must not cross-promote (directly or indirectly) nicotine-containing products (eg by sharing a brand name).

E-cigarettes licenced as medicines or medical devices by the MHRA would not be subject to the legal prohibitions described above. Instead, [rule 12](#) of the CAP Code would apply.

3.3 Broadcast BCAP code: e-cigarette advertising rules

The introduction of the [TRPRs](#) led to amendments to the [Communications Act 2003](#) and to the BCAP Code.

²⁷ [Guidance on electronic cigarette advertising prohibition](#) (online), Advertising Standards Authority, 31 January 2017, (accessed 15 December 2023)

²⁸ As above

²⁹ [ASA ruling on British American Tobacco UK Ltd](#) (online), Advertising Standards Authority, 18 December 2019, (accessed 15 December 2023)

³⁰ As above

The TRPRs prohibit advertisements on television and radio which have the direct or indirect effect of promoting nicotine-containing e-cigarettes and liquids. The prohibition is set out in [rule 10](#) of the BCAP Code (“Prohibited categories”) and includes the full legal definitions of the products for which advertising is prohibited. Specifically, rule 10:

- Prohibits broadcast advertising (in television, radio and on-demand services) for e-cigarettes and refill containers, and sponsorships that promote such products.
- Prohibits the product placement of e-cigarettes and refill containers in television programming and in on-demand programmes and services.

Rule 10 makes an important distinction between a public health campaign and promotions of e-cigarettes by brands acting in the course of a business:

This rule is also not intended to prohibit the promotion of electronic cigarettes and/or refill containers as a means of smoking cessation as part of a public health campaign by national government health departments, national public health bodies, stop smoking services, and charities that do not receive any funding from the tobacco or electronic cigarette industries. Such campaigns must not be conducted in the course of a business or seek to promote specific, unlicensed, nicotine-containing electronic cigarette products.

E-cigarette products which are not caught by these definitions may continue to be advertised in broadcast media subject to [rule 33](#) of the BCAP Code. These are:

- Products which are licensed as medicines or medical devices.
- Non-nicotine containing liquids and refill containers.
- Non-nicotine containing disposable e-cigarettes.
- And rechargeable e-cigarettes which are designed to be fitted only with cartridges containing non-nicotine containing e-liquid.

[Rule 33](#) of the BCAP Code sets out the permissible content of e-cigarette advertising in broadcast media for these products where advertising is still permitted. It is reproduced in **Box 2** below.

2 Rule 33 of the BCAP Code

The [BCAP](#) Code applies to all broadcast advertisements (including teleshopping, content on self-promotional television channels, television text, and interactive tv ads) and programme sponsorship credits on radio and television services licensed by Ofcom.

[Rule 33](#): rules around e-cigarettes:

33.1 Advertisements for e-cigarettes must be socially responsible.

33.2 Advertisements must contain nothing which promotes any design, imagery or logo style that might reasonably be associated in the audience's mind with a tobacco brand.

33.3 Advertisements must contain nothing which promotes the use of a tobacco product or shows the use of a tobacco product in a positive light. This rule is not intended to prevent cigarette-like products being shown.

33.4 Advertisements must make clear that the product is an e-cigarette and not a tobacco product.

33.5 Advertisements must not contain health or medicinal claims unless the product is authorised for those purposes by the MHRA. E-cigarettes may be presented as an alternative to tobacco, but marketers must do nothing to undermine the message that quitting tobacco use is the best option for health.

33.6 Advertisements must not use health professionals to endorse electronic cigarettes. For the avoidance of doubt, this does not apply to public health campaigns (see rule 10.1.11).

33.7 This rule was deleted on 8 November 2018, following public consultation.

33.8 Advertisements must not encourage non-smokers or non-nicotine-users to use e-cigarettes.

33.9 Advertisements must not be likely to appeal particularly to people under 18, especially by reflecting or being associated with youth culture. They should not feature or portray real or fictitious characters who are likely to appeal particularly to people under 18. People shown using e-cigarettes or playing a significant role should not be shown behaving in an adolescent or juvenile manner.

33.10 People shown using e-cigarettes or playing a significant role must neither be, nor seem to be, under 25. People under 25 may be shown in an incidental role but must be obviously not using e-cigarettes.

33.11 Radio Central Copy Clearance – Radio broadcasters must ensure advertisements for e-cigarettes are centrally cleared.

In addition to [rule 33](#), advertisements for medicines or medical devices must also comply with [rule 11](#) which deals with medicines, medical devices, treatments and health.

Although nicotine-containing, unlicensed vaping products cannot be advertised in broadcast media, the promotion of e-cigarettes in general as a way of stopping tobacco smoking is permissible. However, this must be as part of a public health campaign (eg by national public health bodies, stop smoking services, or charities).

According to [online guidance](#), the ASA has some discretion in applying the BCAP Code:

The e-cigarette market continues to innovate rapidly, and new products may emerge which may not be caught precisely by the above definition. The ASA may apply these rules in circumstances where it considers that an advertised product is sufficiently similar to warrant the protection provided by this section.³¹

³¹ [Rule 33: Electronic cigarettes](#) (online), Advertising Standards Authority, undated, (accessed 15 December 2023)

4 Select Committee reports

4.1 Science & Technology Committee

Report on e-cigarettes

In January 2018, the Science and Technology Committee held an inquiry on the health impacts of e-cigarettes and their role as a smoking cessation tool. The Committee received over a hundred pieces of written evidence and held five oral evidence sessions between January and May 2018.

The Committee's report on [E-cigarettes](#) was published on 17 August 2018.³² This report is wide in scope, covering a range of issues relating to the use of e-cigarettes. On the specific issue of the marketing of vapes, the Committee recommended that advertising restrictions on e-cigarettes should be reviewed to better reflect the evidence of the relative harms of e-cigarettes compared to tobacco cigarettes.³³ The Committee called on the Government to consider risk-based regulation:

[...] to allow more freedom to advertise e-cigarettes as the relatively less harmful option, and provide financial incentives, in the form of lower levels of taxation, for smokers to swap from cigarettes to less harmful alternatives such as e-cigarettes.³⁴

The Committee also recommended that the current prohibition on making claims about the relative health benefits of stopping smoking and using e-cigarettes instead should be reviewed.³⁵

Government's response

The Government published its [response](#) to the Committee's report³⁶ in December 2018. In this response, the Government said it believed in "proportionate regulation of e-cigarettes, recognising that they are not risk-free". It said the TRPRs imposed "appropriate standards" for vaping products whilst allowing smokers to move to vapes should they wish; and reduced the "risk of harm to children" and protected against "any risk of renormalisation of tobacco use". The Government highlighted the commitment it made in the

³² Science and Technology Committee's Seventh Report of the Session 2017-19, [E-cigarettes](#), December 2018

³³ As above

³⁴ As above

³⁵ Science and Technology Committee, [Government missed opportunity with e-cigarettes](#), August 2018

³⁶ Department of Health & Social care, [The Government Response to the Science and Technology Committee's Seventh Report of the Session 2017-19 on E-cigarettes](#) (pdf), Cm 9738, December 2018

[Tobacco Control Plan for England](#) to monitor the impact of regulation and policy on e-cigarettes.³⁷

On the specific issue of advertising e-cigarettes, the Government said:

Although there are advertising restrictions on vaping, they are less stringent than those which apply to tobacco products. The Government will of course consider when it reviews the legislation whether these restrictions fully reflect the differing risks of harm arising from tobacco products and e-cigarettes. We would note to the Committee that the Government has issued a direction to Ofcom clarifying that under the current code on television and radio advertising it is permissible for public health campaigns to promote the generic use of e-cigarettes for quitting smoking. This direction will support campaigns such as Stoptober which have promoted the use of e-cigarettes for quitting.³⁸

4.2

Health and Social Care Committee

Evidence Session June 2023

In June 2023, the [Health and Social Care \(HSC\) Committee](#) held an evidence session on youth vaping. The Committee heard evidence from representatives of the health policy, medical and education sectors about the impact of the rising trend in child vaping, and from representatives of the vaping industry about their views on eliminating vaping amongst children.³⁹ The Committee also received written evidence from the Royal College of Paediatrics and Child Health,⁴⁰ UK Vaping Industry Association,⁴¹ and Action on Smoking and Health.⁴²

In a [letter](#) dated 19 July 2023 to Steve Barclay MP, then the Secretary of State for Health and Social Care, Steve Brine MP, Chair of the HSC Committee, expressed concern about the number of children vaping and the unknown health effects:

[...] Witnesses raised concerns about the health and behavioural effects of nicotine consumption— and addiction—in itself on children: for example, its impact on children’s ability to concentrate in school. We also heard about potential long-term health risks of vaping, which may not yet be clear. We

³⁷ As above p.1 to 2

³⁸ As above p.10

³⁹ [Health and Social Care Committee Oral evidence: Youth vaping](#) (PDF), HC 1580, 28 June 2023, (accessed 15 December 2023)

⁴⁰ [Written evidence submitted by The Royal College of Paediatrics and Child Health \(YVP0003\)](#) (PDF), (accessed 15 December 2023)

⁴¹ [Written evidence submitted by the UK Vaping Industry Association \(YVP0004\)](#) (PDF), (accessed 15 December 2023)

⁴² [Supplementary written evidence submitted by Action on Smoking and Health \(YVP0005\)](#) (PDF), (accessed 15 December 2023)

were told about several cases of children obtaining illegal vapes that contained harmful or banned products.⁴³

In calling on the Government to take stronger action to prevent children from obtaining and using vapes, Steve Brine said this must be balanced with the need to discourage a black market in more harmful noncompliant vapes.⁴⁴ He outlined the Committee's recommendations, including:

- The Government should consider bringing restrictions on the packaging and marketing of vapes in line with those that apply to tobacco products.
- The DHSC should provide a summary of its plans for public health work around vaping, including resources aimed specifically at young people.
- The Government should review whether trading standards has sufficient resources and powers to enforce the law on not selling to those under 18.
- The OHID and the Treasury should assess the proposal for an excise tax on disposable vapes, with a specific focus on the likely impact of vape use amongst children and lower income smokers.

Steve Brine restated the Committee's recommendations in a [letter dated 23 November 2023](#) to Victoria Atkins MP, the new Secretary of State for Health and Social Care.⁴⁵ This was in response to the Government's consultation on [Creating a smokefree generation and tackling youth vaping](#).⁴⁶

⁴³ [Letter to Rt Hon Steve Barclay MP, Secretary of State for Health & Social Care, from Steve Brine MP Chair, Health and Social Care Committee, following on the youth vaping evidence session](#), 19 July 2023, (accessed 15 December 2023)

⁴⁴ As above

⁴⁵ Letter to Rt Hon Victoria Atkins MP, [Secretary of State for Health & Social Care, from Steve Brine MP Chair, Health and Social Care Committee](#), 23 November 2023, (accessed 15 December 2023)

⁴⁶ Department of Health and Social Care, [Creating a smokefree generation and tackling youth vaping: your views](#), 20 October 2023, (accessed 15 December 2023)

5 Government action on youth vaping

5.1 Approach

In July 2017, the Government published its [Tobacco Control Plan](#), advising that e-cigarettes could be an aid for smokers attempting to give up tobacco cigarettes:

The best thing a smoker can do for their health is to quit smoking. However, the evidence is increasingly clear that e-cigarettes are significantly less harmful to health than smoking tobacco. The government will seek to support consumers in stopping smoking and adopting the use of less harmful nicotine products.⁴⁷

In April 2023, the Government made a commitment to support 1 million adult tobacco smokers to quit under a new [Swap to Stop](#) scheme.⁴⁸ The scheme is designed to cut smoking rates by encouraging adult smokers to swap cigarettes for vapes.

The Government believes e-cigarettes are an effective tool to help adults quit tobacco smoking and achieve its ambition for England to be smokefree by 2030:

Vaping is already estimated to contribute to [an extra 50,000 to 70,000 smoking quits per year](#) in England. Ensuring that vapes continue to be available to current adult smokers is vital to reducing smoking rates.⁴⁹

However, the Government has also acknowledged concerns about the rising number of children (those under 18) using disposable nicotine vapes, and the unknown long-term harms:

[...] the number of children using vapes has tripled in the past 3 years and a staggering [20.5% of children had tried vaping in March to April 2023](#). Due to nicotine content and the unknown long-term harms, vaping carries risk of harm and addiction for children. The health advice is clear: young people and those who have never smoked should not vape. We have a duty to protect our children from the potential harms associated with underage vaping, while their lungs and brains are still developing. Encouraging children to use a

⁴⁷ Department of Health and Social Care, [Smoke-free generation: tobacco control plan for England](#), 18 July 2017

⁴⁸ [Smokers urged to swap cigarettes for vapes in world first scheme](#) (online), Department of Health & Social Care and Neil O'Brien MP press notice, 11 April 2023, (accessed 15 December 2023)

⁴⁹ 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)

product designed for adults to quit smoking and then addicting them is not acceptable.

While selling nicotine vapes to under 18s is illegal, inherited EU regulations have led to a system where vapes are routinely promoted and marketed to children and young people at scale. Major economies such as USA, Australia and Canada are taking action to tackle sharp increases in youth vaping, and we risk becoming an outlier if we do not keep pace.⁵⁰

On this specific issue, the Government said there was evidence to show that “vaping products are regularly promoted in a way that appeals to children, through flavours and descriptions, cheap convenient products and in-store marketing – despite the risks of nicotine addiction”.⁵¹

In October 2023, the Government published, [Stopping the start: our new plan to create a smokefree generation](#).⁵² In this policy paper, the Government outlined new legislative proposals to tackle youth vaping, as well as to stop future generations from starting smoking tobacco. On the issue of youth vaping, the Government said it was important to strike the right balance:

The Government is committed to having the biggest impact possible in reducing youth vaping. The Government is also conscious of the potential impact that new policies may have on adult smokers looking to quit and the associated health benefits, as vaping is substantially less harmful than smoking and can be an effective tool in supporting adult smokers to quit. Ensuring vapes can continue to be made available to current adult smokers is vital to tackling smoking.

The Government is therefore consulting on a set of proposals to reduce youth vaping, ensuring we get the balance right between protecting our children and supporting adult smokers to quit.⁵³

5.2 Post-implementation review of TRPRs – 2022

On 25 March 2022, the Government published its [Post-implementation Review of the TRPRs](#).⁵⁴ It concluded that the TRPRs should remain in force, but said it would consider additional measures to tackle youth vaping:

Overall, it is the DHSC’s position that the evidence presented [...] provides a strong argument for the retention of the Regulations. There are some areas of tobacco and nicotine products that the Regulations did not cover, with some suggesting that they should do, for example, including non-nicotine vapes and nicotine pouches under the TRPR regulatory framework. In addition, some

⁵⁰ 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)

⁵¹ As above

⁵² 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)

⁵³ As above

⁵⁴ Department of Health & Social Care, [Post-implementation Review \(PIR\) of Tobacco Legislation](#) (online), CP 600, March 2022

argue that TRPR should be strengthened further to include additional measures which restrict tobacco use and prevent youth and non-smokers from using e-cigarettes. This needs to be carefully balanced in supporting efforts to enable adult smokers to switch to e-cigarettes as a less harmful alternative.

Despite these suggested amendments, they do not provide evidence of significant issues with the regulations and removing them would likely result in all the health benefits being lost. The Government will consider the suggestions for changes to the regulations, and a range of other regulatory reforms, to help support its smokefree 2030 ambition.⁵⁵

To help inform the Government's view, various organisations submitted evidence on compliance with, and the impact of, the TRPRs. Significantly, Cancer Research UK published a report on [E-cigarette marketing in the UK](#) (PDF) drawing on evidence from adult and youth surveys and policy compliance studies.⁵⁶ Its key findings included:

- **Good compliance with the TRPRs.** Analysis of e-cigarette advertising expenditure in 2019 showed that 99.9% of spend reported occurred in media channels where e-cigarette advertising was permitted under the TRPR, suggesting good compliance with this aspect of the TRPRs. (However, social media was not included in the expenditure analysis as no data were available.)
- **Good compliance with the Advertising Codes.** Detailed 'content' analysis demonstrated good compliance with ASA CAP Code [rule 22](#) in all channels except for social media (Instagram). All Instagram adverts in the sample were considered in breach of CAP Code [rule 22.12](#).
- **An overall increase in young people reporting noticing the promotion of e-cigarettes between 2017 and 2019.** In particular, marketing on billboards and posters, taxis, buses and public transport (all permitted advertising channels in England).
- **Young people generally noticed e-cigarette marketing more than adults across all channels,** particularly on billboards (31.4% of young people compared to 5.9% of adults reporting noticing).
- **Noticing of e-cigarette marketing on websites/social media remained stable but high among young people between 2017 and 2019** (41.1–43.8%). Importantly, content analysis of adverts found all Instagram posts in the sample – on both public and private Instagram accounts – to be in breach of the TRPRs and CAP Code [rule 22.12](#).
- **More than a third of 16 to 19-year-olds believed that e-cigarette marketing made vaping seem either appealing or very appealing,** despite the introduction of the CAP Code [rules 22.9 -22.11](#) to limit appeal to young people and children.

⁵⁵ As above

⁵⁶ [E-cigarette marketing in the UK](#) (online), Cancer Research UK, March 2021, (accessed 15 December 2023)

- Around a third of young people believed e-cigarette marketing targets people who do not smoke. This proportion increased from 30.3 % in 2017 to 33.9% in 2019.
- Around 90% of adverts did not feature messages relating to smoking cessation or presenting e-cigarettes as an alternative to tobacco. (ASH recognised that this might be because marketers are cautious of breaching CAP Code [rule 22.5](#) by making medicinal claims).
- **Consumer protection messages were unclear.** Research found that 24% of adverts analysed did not contain a nicotine content statement, which is mandatory under CAP Code [rule 22.7](#) if the product contains nicotine. Where consumer protection messages (including the mandatory statement on nicotine content) were observed, messages were considered to have low visibility, bringing into question how informative they were to consumers.

5.3 Call for evidence on youth vaping -April 2023

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.⁵⁷ The Government was particularly interested in evidence on the following themes:

- Building regulatory compliance to ensure only adult smokers can access legally compliant vape products.
- The appeal of vape products and how their appearance and product characteristics may attract children.
- How the marketing and promotion of vape products may attract children.
- The role and impact of social media on the uptake and use of vaping by children.
- Effective educational approaches to prevent the uptake of vaping by children.
- The impact of vapes on the environment, particularly disposable products.
- Understanding the vape market.

⁵⁷ Office for Health Improvement and Disparities, [A call for evidence: Youth vaping](#) 11 April 2023, (last updated 4 October 2023)

On 30 May 2023, the Health Minister Neil O’Brien said the Government would be looking at new measures to reduce the appeal and availability of vapes to children:

The shameful marketing of vaping products to children is leading to growing numbers trying e-cigarettes. Today we are therefore ramping up our efforts to stop kids getting hooked on vaping, including taking steps to crack down on companies handing out free samples to under 18s and adding lessons⁵⁸ on the health risks of vaping within the curriculum for the first time.

We will also review the rules on issuing on-the-spot fines to shops that break the law by selling vapes to underage children and look into banning the sale of nicotine-free vapes to under 18s – which we know can be a gateway to using nicotine products. Alongside this our new specialised “illicit vapes enforcement squad” will also clamp down on online shops selling illicit vapes to under 18s.⁵⁹

The [call for evidence on youth vaping](#) ran until 6 June 2023. In its [analysis of responses](#), published on 4 October 2023, the Government acknowledged that “vapes are not risk free”:

There is well established concern about the harms from vaping, specifically associated with younger people, as outlined in the [Nicotine vaping in England report](#).⁶⁰ There is considerable debate about the scale and nature of these harms. Recently, the Office for Health Improvement and Disparities (OHID), part of the Department of Health and Social Care (DHSC), has worked with the NHS to publish evidence-based information on [vaping to quit smoking](#) including [facts to tell young people about vaping](#).⁶¹

5.4 “Stopping the start” command paper - October 2023

The Government’s formal response to the call for evidence on youth vaping was outlined in its policy paper [Stopping the start: our new plan to create a smokefree generation](#), published on 4 October 2023.⁶² On the of marketing vapes to children, the Government said:

Marketing vapes to children is utterly unacceptable. Some are now clearly trying to addict children including with colours, flavours, cartoons and other marketing methods aiming to tempt children towards addiction.

⁵⁸ Schools can access a Year 9 PSHE lesson on the consequences of vaping via the [PSHE Association website](#)

⁵⁹ [No more free vapes for kids](#) (online), press notice by the Department of Health and Social Care, The Rt Hon Rishi Sunak MP and Neil O’Brien MP, 30 May 2023, (accessed 15 December 2023)

⁶⁰ Office for Health Improvement and Disparities, [Nicotine vaping in England:2022 evidence update](#), 29 September 2022

⁶¹ Office for Health Improvement and Disparities, [Call for evidence outcome: youth vaping](#), 4 October 2023

⁶² Department of Health & Social Care, [Stopping the start: our new plan to create a smokefree generation](#), CP 949-I, 4 October 2023 (last updated 29 November 2023)

The Government has made clear they wish to create a smokefree generation unaffected by the extraordinary harms of addiction-driven smoking, and tackle youth vaping. This Command Paper lays out a route to prevent addiction to smoking before it starts, to support smokers to quit and stop vapes being marketed to children.⁶³

Government proposals include:

- Restricting the flavours and descriptions of vapes so they do not appeal to children.
- Regulating vape packaging and product presentation, ensuring neither are targeted to children.
- Regulating point of sale displays so that vapes are kept out of sight of children.
- Restricting the sale and supply of disposable vapes.
- Closing loopholes in the law which allow children to get free samples and introducing an age restriction for non-nicotine vapes.
- Action on the affordability of vapes, exploring a new duty on vapes.
- Strengthen enforcement activity with new powers to fine on the spot retailers who sell vapes to young people underage. Simultaneously crackdown on illegal online sales by enhancing online age 42 verification to stop the sale of tobacco products and vapes to underage people online.⁶⁴

The Government believes these proposals complement each other, “forming a suite of measures that will work together to reduce the various ways that vapes appeal to children”, reducing youth vaping and “the potential for children to be exposed to the risks”.⁶⁵

Health policy is a devolved matter in Scotland, Wales and Northern Ireland. However, the UK government has said it is committed to working closely with the devolved administrations as it develops these proposals, to align policy approaches where this would improve outcomes and “continuing ongoing collective action” to tackle youth vaping across all parts of the UK.⁶⁶

⁶³ As above

⁶⁴ [The King's Speech 2023](#), Cabinet Office background briefing notes, 7 November 2023, (accessed 15 December 2023)

⁶⁵ As above

⁶⁶ As above

5.5

Consultation – 20 October 2023

The Government’s consultation paper, [Creating a smokefree generation and tackling youth vaping](#), was published on 20 October 2023.⁶⁷ Responses to the consultation, which ended on 6 December 2023, will help inform the Tobacco and Vaping Bill announced in the King’s Speech on 7 November 2023 (see below).

The Government’s key legislative proposals are considered in detail below. The Government has made it clear that these proposals will need to “balance having the biggest impact on youth vaping with ensuring vapes continue to support adult smokers to quit”.⁶⁸

Legislative proposals to tackle youth vaping

Restricting vape flavours

Vape liquids (e-liquids) are typically composed of nicotine, propylene glycol and/or glycerine, and flavourings. The [TRPRs](#) (as amended) currently restrict certain ingredients including colourings, caffeine and taurine. However, the Regulations do not restrict any combinations of flavour or flavour types.

Currently, nicotine vapes are offered for sale in a variety of flavours. For example, flavours include tobacco (to imitate cigarettes) or tobacco blends (eg combining tobacco flavour with vanilla or caramel), menthol and mint, fruit flavours (eg strawberry, blueberry or mango), and sweet and desert flavours (eg popcorn, candy floss, caramel, apple pie and cheesecake). To help with their marketing, new flavours are given attractive names, for example, “fiery flavoured strawberry” and “berry blast”.

A 2023 survey by ASH on the [Use of e-cigarettes among young people in Great Britain](#) found:

- The most frequently used vape flavouring for children was fruit flavour, with 60% of current children using them.
- Sweet flavours such as chocolate or candy were chosen by 17% of children who vape.
- Energy or soft drink flavours were chosen by 4.8% of children who vape.⁶⁹

⁶⁷ Department of Health and Social Care, [Creating a smokefree generation and tackling youth vaping: your views](#), 20 October 2023, (accessed 15 December 2023)

⁶⁸ As above

⁶⁹ [Use of e-cigarettes among young people in Great Britain](#) (online), Action on Smoking and Health (ASH), June 2023, (accessed 15 December 2023)

The Government's [Call for evidence on youth vaping](#) also found that children were attracted to fruit and sweet flavoured vapes, "both in their taste and smell, as well as how they are described".⁷⁰ The Government believes that restricting flavours has the potential to significantly reduce youth vaping.⁷¹

However, flavoured vapes also appeal to adults. According to another [ASH survey](#), in 2015 most adults who vaped used tobacco flavour, but there has been a shift and in 2023 more adults are choosing fruit flavours (47%), as well as mint and menthol (17%), and tobacco (12%).⁷² [Research by London South Bank University](#) has also found that flavoured vaping products can assist adults to quit smoking.⁷³ To avoid unintended consequences on adult smoking rates, the Government said that any restriction on flavours would need to be carefully balanced with ensuring vapes continue to be available and accessible to support adults to quit smoking".⁷⁴

In its consultation paper, [Creating a smokefree generation and tackling youth vaping: your views](#), the Government said it was considering restricting flavours to one of the following options:

- Flavours limited to tobacco only.
- Flavours limited to tobacco, mint and menthol only.
- Flavours limited to tobacco, mint, menthol and fruits only.

The Government said it would also consider regulating non-nicotine vapes in the same way.⁷⁵

Regulating vape packaging & product presentation

As outlined above, the [TRPRs](#) contain requirements on the labelling and presentation of nicotine vaping products. The Regulations set out what can be written on a unit pack of e-cigarettes or on a refill container and a health warning is mandatory.

Legally, the packaging of e-cigarettes and liquids can still 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](#)

⁷⁰ 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)

⁷¹ As above

⁷² [Use of e-cigarettes among adults in Great Britain](#) (online), Action on Smoking and Health (ASH), August 2023, (accessed 15 December 2023)

⁷³ [E-cigarette support for smoking cessation: Identifying the effectiveness of intervention components in an online randomised optimisation trial](#), L Dawkins and C Kimber, London South Bank University, 2023, (accessed 15 December 2023)

⁷⁴ Department of Health and Social Care, [Creating a smokefree generation and tackling youth vaping: your views](#), 20 October 2023, (accessed 15 December 2023)

⁷⁵ As above

[2015](#) and applies standardised packaging to cigarettes and hand rolling tobacco.

The [Call for evidence on youth vaping](#) in England found that children were attracted to vapes through brightly coloured products and packaging and child friendly images.⁷⁶ The Government has also highlighted [research on vape packaging](#) published by the JAMA Network, which shows that “standardised vape packaging with reduced brand imagery can decrease the appeal to young people who have not previously smoked or vaped”, without reducing the appeal of vapes to adult smokers.⁷⁷

The Government believes there is strong public support for stricter regulation of vape packaging and presentation:

The 2023 ASH public opinion survey found that [76% of adults in England support limiting the names of sweets, cartoons and bright colours on vape packaging](#).⁷⁸

In its consultation paper, [Creating a smokefree generation and tackling youth vaping: your views](#), the Government said it wants to ensure that no part of the vape device nor its packaging “targets children”.⁷⁹ It has sought views on the following options for how packaging and presentation of vapes could be restricted:

- Prohibiting the use of cartoons, characters, animals, inanimate objects and other child friendly imagery, on both the vape packaging and vape device. This would still allow for colouring and tailored brand design.
- Prohibiting the use of all imagery and colouring on both the vape packaging and vape device. This would still allow for branding such as logos and names.
- Prohibiting the use of all imagery and colouring and branding for both the vape packaging and vape device. This is equivalent to the standardised packaging rules on tobacco.

Regulating point of sale displays - vapes kept out of sight of children

Vaping products are currently allowed to be displayed at the point of sale in in large and small shops. For example, they might be displayed prominently on countertops, at the till point in supermarkets, or in eye-catching display towers on the shop floor.

⁷⁶ Office for Health Improvement and Disparities, [Call for evidence outcome: youth vaping](#), 4 October 2023

⁷⁷ As above. See also [Association of fully branded and standardised e-cigarette packaging with interest in trying products among youths and adults in Great Britain](#), Eve Taylor MSc, Deborah Arnott MBA, Hazel Cheeseman MSc, JAMA Network, 14 March 2023, (accessed 15 December 2023)

⁷⁸ 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)

⁷⁹ Department of Health and Social Care, [Creating a smokefree generation and tackling youth vaping: your views](#), 20 October 2023, (accessed 15 December 2023)

In contrast, the sale of tobacco products is strictly regulated, with plain packaging and a requirement for products to be held in a storage unit behind the counter out of sight. This prohibition on tobacco displays applies to large and small shops. Further information is provided in a separate briefing on [Prohibition of tobacco displays in shops](#) (CBP 5537).

In its policy paper, [Stopping the start: our new plan to create a smokefree generation](#) (4 October 2023), the Government said it was considering bringing forward legislation on point of sales displays of vaping products to protect children:

It is unacceptable that children can see and pick up vapes in retail outlets easily due to them being displayed within aisles, close to sweets and confectionary products and on accessible shelves.⁸⁰

In explaining its policy rationale, the Government drew on analysis from Imperial College London 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 that [74% of adults in England support prohibiting point of sale promotion of vapes](#).⁸¹

In its consultation paper, [Creating a smokefree generation and tackling youth vaping: your views](#) the Government said it wanted to limit the exposure of children to vapes and keep them out of sight and reach of children.⁸² However, it also said it was important not to inhibit adult smokers from accessing vapes as a quit aid, “so they must remain visible enough”.⁸³

⁸⁰ 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)

⁸¹ As above

⁸² Department of Health and Social Care, [Creating a smokefree generation and tackling youth vaping: your views](#), 20 October 2023, (accessed 15 December 2023)

⁸³ As above

The Government consulted on two options for regulating point of sale displays of vapes:

- Vapes must be kept behind the counter and not on display (like tobacco products), or
- Vapes must be kept behind the counter but can be on display.

The Government also sought views on whether specialist vape shops should be an exception to any restrictions, as they usually have a wider selection of vaping devices and products available. Also, some specialist shops have staff trained by the [National Centre for Smoking Cessation and Training](#), to offer advice to smokers wanting to quit.

The Government also said that it would consider regulating non-nicotine vapes and non-nicotine e-liquids in the same way.

Restricting the sale & supply of disposable vapes

A disposable vape is designed for single use; it is neither rechargeable nor refillable and must be thrown away when it runs out of charge or e-liquid.⁸⁴ They contain plastic, copper, rubber, and a lithium battery.

It is suggested that children are attracted to disposable vapes because they are convenient and easy to use. A survey by ASH on the [Use of e-cigarettes among young people in Great Britain](#) found that in 2021 only 7.7% of vape users aged 11 to 17 used disposable vapes, compared to 52% in 2022 and 69% in 2023.⁸⁵ There has also been a significant increase in the number of adults using disposable vapes, from 2.3% in 2021 to 31% in 2023.⁸⁶

The Government is also concerned about the threat that disposable vapes pose to the environment.⁸⁷ Due to their lithium batteries, there are fire risks associated with their unsafe disposal; other component parts are not easily recyclable. Most disposable vapes are either littered or thrown away in general waste.

In its consultation paper, [Creating a smokefree generation and tackling youth vaping: your views](#), the Government said it was considering restrictions on the sale and supply of disposable vaping products (both nicotine and non-nicotine vapes), including prohibiting the sale of these products due to their environmental impact.⁸⁸ It sought views on this issue.

⁸⁴ In contrast, a reusable vape can be recharged and refilled an unlimited number of times by the user, the device can contain vape liquid with or without nicotine

⁸⁵ [Use of e-cigarettes among young people in Great Britain](#) (online), Action on Smoking and Health (ASH), June 2023, (accessed 15 December 2023)

⁸⁶ As above

⁸⁷ 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)

⁸⁸ Department of Health and Social Care, [Creating a smokefree generation and tackling youth vaping: your views](#), 20 October 2023, (accessed 15 December 2023)

Closing legal loopholes

(i) Introducing an age restriction for non-nicotine vapes

Drawing on [data published by ASH](#), the Government believes there is clear evidence of young people accessing non-nicotine vapes in Great Britain.⁸⁹

As a “first step to protect children”, the Government said it would introduce legislation to prohibit the sale of non-nicotine vapes to under 18s.⁹⁰ In its consultation paper, it also sought views on whether further restrictions on non-nicotine vapes were necessary “to ensure our rules keep up with the way that vaping products are being used”.⁹¹

The introduction of an age restriction for non-nicotine vapes would apply to England and Wales only. Scotland has already introduced age of sale requirements for non-nicotine vapes. Internationally, around 30 countries have prohibited the sale of non-nicotine vapes, and another 50 countries allow them to be sold but with age restrictions.⁹²

(ii) Prohibiting free vape samples to children

Research by ASH on the [Use of e-cigarettes among young people in Great Britain](#), found that 2% of 11-to-15 year olds who have vaped (approximately 20,000) said their first vape was given to them by a vape company.⁹³

Although not included in the consultation, the [Stopping the start: our new plan to create a smokefree generation](#) policy paper reiterates the Government’s intention to close the legal loophole which allows the industry to give free samples of nicotine and non-nicotine vapes to under 18s. This prohibition would apply to England and Wales only.

Action on the affordability of vapes

In early 2023, ASH called on the Government to introduce an excise tax for single-use disposable cigarettes in its March Budget to make them significantly less affordable for children while still less expensive than tobacco.⁹⁴ In the event, tobacco prices rose in the [Spring Budget](#), but the cost of e-cigarettes was not affected.⁹⁵

⁸⁹ [Use of e-cigarettes among young people in Great Britain](#) (online), Action on Smoking and Health (ASH), June 2023, (accessed 15 December 2023)

⁹⁰ Department of Health and Social Care, [Creating a smokefree generation and tackling youth vaping: your views](#), 20 October 2023, (accessed 15 December 2023)

⁹¹ As above

⁹² 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)

⁹³ [Use of e-cigarettes among young people in Great Britain](#), (online), ASH (Action on Smoking and Health), June 2023, (accessed 15 December 2023)

⁹⁴ [Add £4 to the price of vapes to deter children, say campaigners](#), The Telegraph, 11 February 2023 (accessed 15 December 2023)

⁹⁵ Vaping products are subject to VAT at the standard rate of 20%. A reduced rate of 5% can be applied to pharmaceutical products designed to stop people from smoking tobacco.

The Cabinet Office's [Background Briefing Notes](#) to the King's Speech (7 November 2023) suggested a new duty on vapes is being considered by Ministers. However, there was no mention of this in the [Autumn Statement](#).

Strengthen enforcement activity

The Government is concerned about illicit vapes being offered for sale on the UK market and bought by children.⁹⁶ In its policy paper, it highlighted National Trading Standards data for 2022 to 2023 which found that 27% of the 1,000 retail test purchases for vapes had resulted in an illegal sale.⁹⁷ Similarly, between 2022 to 2023, trading standards seized 2.1 million illicit vapes across England:

These vapes often contain unknown ingredients, higher levels of nicotine and are often made easily available through markets that target children.⁹⁸

The Government believes a strong approach to enforcement is vital if its youth vaping policy is to have real impact.⁹⁹

The consultation paper includes the following proposals to strengthen enforcement activity.

Fixed penalty notices for underage sales

Currently, penalties for underage sales can escalate from a warning through to a maximum fine of £2,500 or, for serious or repeat offences, trading standards can apply for a court order to prevent the offending retailer from opening for a period of time. The difficulty for trading standards is that the current penalty regime requires trading standards to prosecute the retailer and to secure a conviction in the Magistrates court. According to trading standards officers, "this time-consuming court procedure limits their ability to issue fines and is a significant gap in their operational capabilities".¹⁰⁰

In May 2023, there was a review into the rules on trading standards issuing on-the-spot fines to retailers illegally selling nicotine vapes to under 18s.¹⁰¹ The review concluded that fixed penalty notices (FPNs) would enable trading standards "to take more swift and proportionate enforcement action".¹⁰²

⁹⁶ 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)

⁹⁷ As above

⁹⁸ As above

⁹⁹ As above

¹⁰⁰ As above

¹⁰¹ Department of Health & Social Care, The Rt Hon Rishi Sunak MP, and Neil O'Brien MP, [No more free vapes for kids – Government takes steps to crack down on rogue firms targeting children with free samples](#), 30 May 2023

¹⁰² 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)

The Government intends to strengthen enforcement activity by creating FPNs for underage vape sales in England and Wales.¹⁰³ In Scotland, local authorities already have powers to issue FPNs to retailers and individuals who commit an offence under the [Tobacco and Primary Medical Services \(Scotland\) Act 2010](#). In Northern Ireland, there is local enforcement through the [Tobacco Retailers Act \(Northern Ireland\) 2014](#).

Enhance online age verification

Simultaneously, the Government said it intends to enhance online age verification to stop the illegal sale of vapes to children.¹⁰⁴

Retailers have an obligation to ensure they do not sell age restricted products online to people under the minimum age and are expected to take all ‘reasonable’ precautions and exercise ‘due diligence’. However, current legislation does not specify how age should be verified for online sales of vapes. The Government is concerned that some online retailers are not taking sufficient steps to prevent underage vape sales. A recent ASH report found that 7.6% of children aged 11 to 17 who are currently vaping, buy vapes online.¹⁰⁵

As a first step to protect children, the Government has said it would work with retailers to produce good practice guidance on online age verification. There may be other statutory measures:

The Government has proposed legislation to make online identity and eligibility verification safer and easier through the [Data Protection and Digital Information \(no.2\) Bill](#), which is currently being considered by Parliament. [The UK digital identity and attributes trust framework](#) has been drafted to work for age verification solutions. This framework provides a potential opportunity for companies providing age verification services to be certified, to prove they are delivering age assurance solutions that meet government standards. It also provides an opportunity for online retailers selling tobacco products and vapes to start introducing age verification solutions through their websites, so they can be more confident that they are selling to someone over the legal age of sale.¹⁰⁶

5.6

King’s Speech: new Tobacco and Vapes Bill

In the [King’s Speech](#) on 7 November 2023, the Government announced its intention to introduce a “Tobacco and Vapes Bill”. The Bill is expected to

¹⁰³ Department of Health and Social Care, [Creating a smokefree generation and tackling youth vaping: your views](#), 20 October 2023, (accessed 15 December 2023)

¹⁰⁴ [The King’s Speech 2023](#), Cabinet Office background briefing notes, 7 November 2023, (accessed 15 December 2023)

¹⁰⁵ [Use of e-cigarettes \(vapes\) among young people in Great Britain](#) (online), Action on Smoking and Health (ASH), June 2023, (accessed 15 December 2023)

¹⁰⁶ 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)

include provisions to restrict the sale and marketing of e-cigarettes to children. The Cabinet Office published [Background Briefing Notes](#) alongside the King's Speech.¹⁰⁷

¹⁰⁷ [The King's Speech 2023](#), Cabinet Office background briefing notes, 7 November 2023, (accessed 15 December 2023)

6 Views of stakeholders

6.1 Local Government Association

The [Local Government Association](#) (LGA) has raised concerns about the marketing of vapes with designs and flavours that could appeal to young people under 18 (eg fruity and bubble gum flavours).¹⁰⁸ According to the LGA, trading standards in England and Wales have reported 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. Teams reported a significant rise in underage vape sales last year.¹⁰⁹

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.

This has become a major concern for councils, who are seeing a sharp rise in cases of shops and other outlets selling vaping products to people under 18.¹¹⁰

The LGA is calling on the Government to introduce strict new measures to regulate the display and marketing of vaping products in the same way as tobacco products.¹¹¹ Specifically, it is calling for:

- Vapes to be in plain packaging and kept out-of-sight behind the counter.
- Mandatory age-of-sale signage on vaping products (it is currently voluntary).

¹⁰⁸ [Vapes need to be “out-of-sight and out-of-reach” to tackle underage sales](#), Local Government Association, 11 February 2023, (accessed 15 December 2023)

¹⁰⁹ As above

¹¹⁰ As above

¹¹¹ As above

- A ban on free samples of vaping products being given out to people of any age.

The LGA suggests that sanctions for breaching these rules should be the same as existing penalties for a breach of the tobacco display regulations.

6.2 Health charities & other health bodies

In February 2023, [ASH](#) published a policy briefing in which it called for tighter regulation on the marketing of vapes “in light of growing evidence of increases in underage vaping”.¹¹² ASH made a number of recommendations to reduce the appeal of vapes to children, including:

- Putting vapes behind the counter out of sight.
- A ban on the use of cartoon characters and bright colours on vape packs.
- A ban on the use of product names or descriptions associated with sweets (eg ‘gummy bears’).
- A ban on the use of certain product design features (eg vapes that glow in the dark).
- Mandatory age verification in shops for anyone looking under 25.
- Taxing disposable vapes which are the cheapest and most popular vape or children.
- Better funding or enforcement using MHRA e-cigarette notification fees.

In explaining the need for tighter regulation and increased enforcement, ASH said vaping is “not risk free” despite being less harmful than smoking.¹¹³

Other health bodies have also raised concerns about the “glamorous promotion of vaping on social media” and have called on social media platforms to take responsibility.¹¹⁴ Some commentators suggest that vaping can be a gateway for children to tobacco cigarettes.¹¹⁵ The [Royal College for Paediatricians and Child Health](#) (RCPCH) have called for a ban on disposable vapes following concerns from its members about the popularity of vaping

¹¹² [ASH policy briefing on vaping](#) (online), Action on Smoking and Health (ASH), February 2023, (accessed 15 December 2023)

¹¹³ As above

¹¹⁴ [UK campaigners call for tighter regulations on vapes to match tobacco](#) (online), Guardian, 11 February 2023, (accessed 15 December 2023)

¹¹⁵ [There’s a new status symbol for Britain’s teenagers – and its toxic](#) (online), Telegraph, 14 July 2022, (accessed 15 December 2023)

amongst children.¹¹⁶ Dr Mike McKean, vice president for policy at the RCPCH said:

Youth vaping is fast becoming an epidemic among children, and I fear that if action is not taken, we will find ourselves sleep walking into a crisis.¹¹⁷

The [British Paediatric Respiratory Society](#) also supports a ban on disposable vapes, arguing that the chemicals within vapes can be “directly harmful to the lungs and the full effects of these toxicities are unlikely to be known for many years”.¹¹⁸

In June 2023, in response to the Government’s call for evidence on youth vaping,¹¹⁹ the Children’s Commissioner for England, Dame Rachel De Souza, said:

For adults overcoming nicotine addiction, vapes may represent a lower-risk alternative to smoking cigarettes. However, the risk calculation for children is not the same. Many children who are addicted to vaping have never smoked tobacco, with vaping acting as a gateway rather than a quitting strategy. I am unequivocal in my view that to lead healthy lives, children should not be smoking or vaping. We have failed a generation if we allow these highly addictive, and sometimes dangerous, products to become mainstream.

Both children and parents are crying out for more information about, and regulation of, this ‘Wild West’ market. It is insidious that these products are intentionally marketed and promoted to children, both online and offline. I strongly welcome the Government’s recent move to close the loophole that allows companies to give free vaping samples to children – but this should have never been legal. Other measures, including the new Illicit Vape Enforcement Squad, are also welcome. However, to avoid even more children becoming addicted to these products, we need stricter regulation now. For children for whom it is sadly too late to prevent them from becoming addicted, we must provide swift and non-judgmental health-based support to them.¹²⁰

On 14 December 2023, the World Health Organization (WHO) [published a call to action on e-cigarettes](#).¹²¹ In this document, the WHO states:

The promotion of e-cigarettes has led to marked increases in e-cigarette use by children and adolescents, with rates exceeding adult use in many countries. Further, to date, the commercialization (sale, importation, distribution or manufacture) of e-cigarettes as consumer products has not been proven to

¹¹⁶ [Commissioner calls for ban on disposable vapes to protect children](#) (online), Children & Young People Now, 9 June 2023, (accessed 15 December 2023)

¹¹⁷ As above

¹¹⁸ As above

¹¹⁹ Office for Health Improvement and Disparities, [A call for evidence: Youth vaping](#) 11 April 2023, (last updated 4 October 2023)

¹²⁰ [The Children’s Commissioner’s response to ‘youth vaping: call for evidence’](#) (online), Children’s Commissioner website, 9 June 2023, (accessed 15 December 2023)

¹²¹ [Electronic cigarettes: call to action](#) (online), World Health Organization, 14 December 2023, (accessed 2 January 2023)

have had a net benefit for public health. Instead, alarming evidence on their adverse population health effects is mounting.¹²²

Based on its assessment of available evidence, the WHO made a number of recommendations, including:

Where countries permit commercialization [...] of e-cigarettes as consumer products, they should ensure strong regulations to reduce their appeal and their harm to the population, including by banning all flavours, limiting the concentration and quality of nicotine, and taxing them.¹²³

6.3 Views of the vaping industry

The vaping industry as a whole emphasises that e-cigarettes are intended for ‘adult smokers’ who want to quit smoking or are looking for a safer alternative to tobacco cigarettes.¹²⁴

The [Independent British Vape Trade Association](#) (IBVTA) has welcomed Government proposals to tighten regulation on underage sales:

Selling products to under 18s has been illegal for some years now, as have proxy sales. Those who ignore the law bring reputable retailers who uphold strict age verification protocols into disrepute. We welcome the planned review on bringing nicotine-free products under existing rules and we look forward to continuing to support enforcement agencies in tackling illicit trade and illegal products.

The loophole allowing free samples to be distributed regardless of consumer age is a gap that no self-respecting business should ever have considered exploiting. The IBVTA applauds the announcement that such activity will soon be illegal.¹²⁵

Responding to the [Prime Minister’s Conservative Party Conference speech](#) on 4 October 2023, the [IBVTA](#) said it welcomed the announcement that “smoking will be phased out as part of an incremental generational approach” but warned that “over-regulating popular adult vape products could deny adult smokers a proven smoking cessation tool”.¹²⁶ It said that disproportionate regulation of vaping would “create a ‘wild west’ of unregulated and untested products pushed by criminals” and made widely available to children.¹²⁷ It also emphasised the importance of vapes as a tool to help quit tobacco smoking:

¹²² As above

¹²³ As above

¹²⁴ See for example, [A new study recognises the role reputable vape shops play in reducing smoking](#), Independent British Vape Trade Association, 2018 (accessed 15 December 2023)

¹²⁵ [No more free vapes for kids](#) (online), press notice by the Department of Health and Social Care, The Rt Hon Rishi Sunak MP and Neil O’Brien MP, 30 May 2023, (accessed 15 December 2023)

¹²⁶ [IBVTA welcomes tobacco phase out but highlights role of vapes as smoking cessation tool](#), 4 October 2023, Independent British Vape Trade Association (IBVTA), (accessed 15 December 2023)

¹²⁷ As above

All the evidence shows that single use products are a crucial first step to getting smokers off tobacco particularly in disadvantaged communities with high levels of smoking where, because of their ease of use, they are an effective smoking cessation tool. Undermining these products risks undermining the Government's ambitions for a smoke-free England and to phase out tobacco use.

As an industry, we recognise that youth vaping needs to be tackled and we stand-ready to work with Government and towards this and we welcome wider consultation on the industry. Rather than the knee-jerk introduction of new regulations, existing legislation should be properly enforced, and responsible manufacturers and retailers properly supported, rather than reaching for the blunt instrument of policy measures that could have damaging consequences.¹²⁸

The [UK Vaping Industry Association](#) (UKVIA) has called for 'appropriate' regulation of the branding and packaging of e-cigarettes to ensure they do not inadvertently appeal to on-smokers or young people.¹²⁹ It has also published [Packaging, Labelling and Flavour Name guidelines](#) setting standards for e-liquids, flavour names and flavour descriptors on sale in the UK market.¹³⁰ Describing these guidelines, it said:

The document focuses on limiting references to youth culture, removing imagery and descriptors which may be misleading, linked to illegal or dangerous substances, or have unsubstantiated health claims.

Our guidelines would also – I adopted and translated into regulation – explicitly ban cartoons and youth-appealing iconography, and proportionately restrict flavour names/descriptors that may disproportionately appeal to underage users. Ultimately, these guidelines seek to promote the responsible manufacture and sale of e-liquids, whilst not limiting brand creativity.¹³¹

However, the UKVIA rejects the idea that plain packaging should apply to vaping products:

Such a move would just put vaping in the same bracket as smoking at a time when we know that misperceptions of the relative harm between the two categories is discouraging adult smokers to quit using vaping. There is growing evidence amongst leading health bodies that vaping is the most effective method by some way in helping adult smokers quit their habits.¹³²

In June 2023, in response to the [Health and Social Care Committee's](#) evidence session on youth vaping,¹³³ the [UKVIA](#) submitted written evidence in which it stressed the importance of vapes as a smoking cessation tool:

¹²⁸ As above

¹²⁹ [Statement from the UKVIA: action on e-cigarette packing aimed at children](#) (online), UK Vaping Industry Association (UKVIA) (no date) (accessed 14 December 2023)

¹³⁰ As above

¹³¹ As above

¹³² As above

¹³³ [Health and Social Care Committee Oral evidence: Youth vaping](#) (PDF), HC 1580, 28 June 2023, (accessed 15 December 2023)

Studies show that e-cigarettes are now the most popular quit aid in England (PHE report - Vaping in England) and that they are more effective at helping people quit than NRTs (Cochrane Review).

[...]

Key to the success of these products is the ability to provide a nicotine effect and experience that is competitive with combustible cigarettes.

[...]

Importantly, e-cigarettes provide nicotine without the toxicants in cigarette smoke. Burning tobacco creates thousands of combustion products, of which around 150 are known to be toxic. E-cigarettes do not contain tobacco and there is no combustion.¹³⁴

6.4 Association of Convenience Stores

The [Association of Convenience Stores](#) (ACS), responding to the Scottish Government's February 2022 consultation on tightening the rules on advertising and promoting of vaping products (see below), said the implementation of age of sale requirements had significantly reduced youth access to e-cigarettes through retail settings.¹³⁵ 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.¹³⁶

Responding to the [Prime Minister's Conservative Party Conference speech](#) on 4 October 2023,¹³⁷ the ACS said it welcomed "further consultation on vaping products" and hoped the Government would "look carefully at increasing

¹³⁴ [Written evidence submitted by the UK Vaping Industry Association \(YVP0004\)](#) (PDF), (accessed 15 December 2023)

¹³⁵ [ACS Submission: Tightening rules on advertising and promoting vaping products](#) (PDF), Association of Convenience Stores, undated, (accessed 15 December 2023)

¹³⁶ As above

¹³⁷ [Prime Minister Rishi Sunak wrapped up Conservative Party Conference 2023](#), Conservative Party, 4 October 2023, (accessed 15 December 2023)

funding for enforcement activity to prevent underage sales and stamp out the sale of illegal vapes”.¹³⁸

Following the King’s Speech on 7 November 2023 and the announcement of a new Tobacco and Vaping Bill, the ACS again called for stronger enforcement action to tackle illicit products:

In both the tobacco and vaping markets, current and future regulations must be enforced far better. It is unacceptable that responsible retailers are being undermined by others selling products that are already illegal, often to children. We need to see funding for Trading Standards to carry out more local enforcement activity against rogue vape sellers.¹³⁹

¹³⁸ [PM Promises Action on Tobacco and Vaping in Party Conference Speech](#), ACS (the Association of Convenience Stores), 4 October 2023 (accessed 15 December 2023)

¹³⁹ [ACS calls for clarity on tackling retail crime in King’s Speech](#) (online), The Association of Convenience Stores (ACS), 7 November 2023, (accessed 15 December 2023)

7

Parliamentary debates and Parliamentary Questions

7.1

Debates

On 31 October 2019 there was a [Westminster Hall debate on e-cigarettes](#).¹⁴⁰ This debate included consideration of the [Seventh report of the Science and Technology Committee](#)¹⁴¹ and the [Government's Response](#).¹⁴²

On 2 May 2023, there was a [Westminster Hall debate on vaping by the under 18s](#).¹⁴³ Introducing the debate, Dr Neil Hudson MP agreed with the Government that e-cigarettes have an important part to play in supporting adults to quit tobacco smoking, but he argued there should be greater protection of children. He described the use of vapes by children as an “epidemic”:

Action on Smoking and Health—ASH —said in its survey of 11 to 17-year-olds in Great Britain that 15.8% of 11 to 17-year-olds had tried vaping in 2022, up from 11.2% in 2021. It also said that in 2022, 7% of 11 to 17-year-olds were current users of vapes, up from 3.3% in 2021.

[...]

Similarly, an NHS survey in 2021 said that 9% of 11 to 15-year-olds, and 18% of 15-year-olds, had used vapes. Those are alarming statistics. ASH England also noted that the most frequently used e-cigarettes among young people are disposable vapes, with an astonishing increase from 7.7% in 2021 to 52% in 2022.¹⁴⁴

Dr Hudson suggested that demand was being driven by the marketing of fruit flavoured disposable e-cigarettes:

A particular issue with the vaping market is the flagrant targeting of under-18s as potential consumers through trendy advertising on social media. Products are promoted with bright colours and inviting fruit flavours—sweet flavours such as mango, bubble gum and cherry ice.

During this debate, some Members raised concerns about how inhaled flavourings and chemicals might impact on health. Dr Caroline Johnson MP

¹⁴⁰ [HC Deb 31 October 2019 c193-210 WH](#)

¹⁴¹ [E-cigarettes](#) (pdf), Seventh Report of the Science and Technology Committee, Session 2017-19, HC 505

¹⁴² [The Government Response to the Science and Technology Committee's Seventh Report of the Session 2017-19 on E-cigarettes](#) (PDF), CM 9738

¹⁴³ [HC Deb 2 May 2023 c17-24WH](#)

¹⁴⁴ As above

suggested that a more nuanced advertising message was needed, “a form of words be used in vaping adverts to make it clear that the products should be for people who smoke, not for those who do not.”¹⁴⁵

Neil O’Brien, then Parliamentary Under-Secretary of State for Health and Social Care, outlined the Government’s position regarding the marketing and advertising of e-cigarettes:

Until recently, our regulations—including on the minimum age of sale, advertising restrictions and the cap on nicotine levels—have been reasonably effective at keeping the rate of vaping among under-18s low. However, over the last 18 months we have seen a surge in the use and promotion of cheap, colourful products that do not always comply with our regulations, and there has been a sharp increase in the number of children vaping. NHS figures show that 9% of 11 to 15-year-old children used e-cigarettes in 2021—up from 6% in 2018. That is a big concern, because there is every reason to think that the rate has continued to go up.

We know that vapes are not risk-free. Nicotine is highly addictive and can be harmful, and there are unanswered questions about the effects of long-term use, as the hon. [...] Our message is very clear: vapes should not be used by people under the age of 18, or by non-smokers.

That is why I announced on 11 April that we are stepping up our efforts to stop kids getting hooked on vaping. First, we launched a call for evidence on youth vaping to identify opportunities to reduce the number of children accessing and using vape products, and to explore where the Government can go further. That call for evidence explores a range of issues, including how we ensure regulatory compliance, the appearance and characteristics of vapes, the marketing and promotion of them, and the role of social media.¹⁴⁶

The [Disposable Electronic Cigarettes \(Prohibition of Sale\) Bill](#), a Private Members’ Bill (under the Ten Minute Rule), was introduced in the House of Commons by Dr Caroline Johnson on 8 February 2023. In calling for a ban on single use vapes, Dr Johnson said there was a risk of “creating a new generation of nicotine addicts”:

Vaping manufacturers often insist that their products are intended for adults only but, at the same time, their product design appeals to a far more impressionable audience. They come in a range of bright, attractive colours. Some of the most popular flavours include bubble gum, cotton candy and strawberry ice cream. Their price and disposability make the habit easier to hide from parents and teachers, who are unlikely to approve.

The slick marketing has been underlined in some cases by more overt flouting of the rules. An investigation by the *Observer* found that Elf Bar products had been promoted to children on TikTok. Similarly, sports teams such as Blackburn Rovers and St Helens rugby club have been sponsored by the vape retailer Totally Wicked. This reminds one of the cigarette marketing campaigns of the past.

¹⁴⁵ As above

¹⁴⁶ As above

[...]

I am concerned about the health of our children and the effect on them of these products that we still know so little about. By banning the sale of disposable vapes, we will encourage a more sustainable way of utilising e-cigarettes as quitting aids and make vaping less accessible to children, preventing an epidemic of teenage nicotine addicts and protecting our planet.¹⁴⁷

On 5 September 2023, a Private Members' Bill (under the Ten Minute Rule) was introduced in the House of Commons by Helen Hayes MP.¹⁴⁸ Calling on the Government to support her Bill, Helen Hayes said it would ban e-cigarettes from being advertised, branded and packaged to appeal to children, including online. Vapes would still be readily available to those who wanted to use them as a smoking cessation tool.¹⁴⁹

Focusing on statistics which showed a significant increase in youth vaping, Helen Hayes said there was a widespread perception that vaping was “a harmless activity, rather than a less harmful activity than [tobacco] smoking”.¹⁵⁰ She said the aim of her Bill was to protect children:

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 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 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.¹⁵¹

She said that vaping had shifted from a smoking cessation tool to a recreational activity in its own right, “driven by tobacco companies which fund many of the largest e-cigarette suppliers – to keep making a profit from the highly addictive substance of nicotine”.¹⁵² Highlighting data from the Office of National Statistics (2023), she suggested this marketing approach was working, with youth vaping “already feeding through into a dramatic increase in young adults vaping, with a particularly sharp increase in the number of young women using vapes”.¹⁵³

¹⁴⁷ [HC Deb 8 February 2023 c.926-928](#)

¹⁴⁸ [HC Deb 5 September 2023 c.243-245](#)

¹⁴⁹ As above

¹⁵⁰ As above

¹⁵¹ As above

¹⁵² As above

¹⁵³ As above

7.2

Parliamentary Questions (PQs)

On 17 June 2019, Seema Kennedy, then Parliamentary Under-Secretary for Health and Social Care, provided the following written response to a PQ asked by Paul Farrelly MP on what steps the Government is taking to tackle underage vaping:

The European Union’s Tobacco Product Directive (2014/40/EU) legislates for, amongst other matters, the regulation of electronic cigarettes. It has been transposed into United Kingdom law by the UK [Tobacco and Related Products Regulations 2016](#). The legislation introduced measures to regulate e-cigarettes to reduce the risk of harm to children through rules on product safety, labelling and restrictions on advertising for electronic cigarettes.

Furthermore, the Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations 2015 makes it illegal to sell an electronic cigarette to anyone aged under 18 years. Local trading standards have enforcement powers to take action on breaches of both sets of regulations.

We continue to monitor the evidence and data on youth vaping. Public Health England’s latest e-cigarette evidence review published in February 2019 indicates regular youth use of electronic cigarettes remains low. The Government has also made a commitment to review the [Tobacco and Related Products Regulations 2016](#) by May 2021, and the [Nicotine Inhaling Products \(Age of Sale and Proxy Purchasing\) Regulations 2015](#) by May 2020.¹⁵⁴

On 11 July 2023, during [oral questions](#), there was an exchange between Alex Cunningham MP, Steve Barclay, then Secretary of State for Health and Social Care, and others about what steps the Government was taking to tackle vaping by young people.¹⁵⁵ The Minister said that the Government had already committed £3 million to crack down on those selling vapes illegally to children, had announced in May 2023 that it would close the loophole that allowed free samples to be offered to children, and had conducted a call for evidence on youth vaping.¹⁵⁶ However, Alex Cunningham asked why the Government had voted down a new clause in the Health and Care Bill, proposed by Labour, which would have given it the primary powers needed to stop the promotion of e-cigarettes aimed directly at children.¹⁵⁷

Maggie Throup MP asked the Minister what progress the MHRA had made on licensing e-cigarettes, as this would send “a strong message that vaping is a dangerous pastime”.¹⁵⁸ Martyn Day MP asked if the Government had considered banning disposable vapes completely as a way of protecting young people.¹⁵⁹ Responding to these questions, the Minister said the Government’s message was clear, “if you smoke, vaping is much safer; if you don’t smoke, don’t vape”. He agreed that the increase in youth vaping was

¹⁵⁴ [17 June 2019, WPO 263087](#)

¹⁵⁵ [HC Deb 11 July 2023 c. 156-157](#)

¹⁵⁶ As above

¹⁵⁷ As above

¹⁵⁸ As above

¹⁵⁹ As above

largely due to the growth in the use of disposable vapes, and said the Government was committed to “toughening up the regime”.¹⁶⁰

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¹⁶⁰ As above

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