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**To:** Communities and Housing Policy Board

**On:** 16 January 2024

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**Report by:** Director of Environment, Housing & Infrastructure

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**Heading:** Creating a smokefree generation and tackling youth vaping – a consultation by the Department of Health & Social Care

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## 1. Summary

- 1.1 On 12 October 2023, the Department of Health & Social Care (DHSC) launched an open consultation on the on the proposed actions the UK Government and devolved administrations are considering to tackle smoking and youth vaping. The consultation - [Creating a smokefree generation and tackling youth vaping](#) closed on 6 December 2023.
- 1.2 The proposed actions are outlined in more detail in the DHSC Command Paper, [Stopping the start: our new plan to create a smokefree generation](#) which specifically sets out the regulatory approach for England. Health and Environmental policy are both devolved matters, and it will be for those administrations to implement their own legislative controls. It is recognised however, that these problems are UK-wide in nature, and as such the devolved nations agreed for the DHSC to lead on this consultation.
- 1.3 This open consultation sought views on proposals to protect future generations from the harms of tobacco, by creating the first “smokefree” generation. To progress the smokefree generation, the UK Government, Scotland and Wales have committed to legislating to ensure that children turning 14 this year or younger (born on or after 1 January 2009) will never legally be able to be sold tobacco products. In effect, this raises the smoking age by a year, each year, until it applies to the whole population.
- 1.4 Considering the increasing use of Nicotine Vapour Products (NVPs, e-cigarettes or “vapes”) by young persons; the consultation also proposed measures to tackle this growing problem. Views were sought on a suite of potential controls including:
  - restricting flavours,
  - regulating point of sale displays,
  - regulating packaging and presentation,

- restricting the supply and sale of single-use vapes,
- the extension of controls to non-nicotine vapes, and
- the affordability of vapes.

- 1.5 This consultation offers progression on the Council position to support a ban on single-use (disposable) vape products. Council Motion 1 of the meeting of 2 March 2023 was passed by unanimous agreement, in the following terms: *"Renfrewshire Council agrees to support the 'Ban Disposable Vapes' campaign. Council officers will write to the Scottish Government to ask them to enact the ban."*
- 1.6 The response to the consultation was collated from the experience of relevant services across the Council. As the regulatory powers suggested are likely to be conferred upon Trading Standards (by virtue of the duty being imposed upon the local weights & measures authority), this exercise was led by Climate & Public Protection. Views were sought from other Council Services as well as the Health & Social Care Partnership. The response was due to be submitted by 6 December 2023, and a copy of this response this has been included in appendix A.

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## 2. Recommendations

It is recommended that the Communities and Housing Board:

- 2.1 notes the consultation proposals, and homologates the submitted response, as detailed within Appendix A, and
- 2.2 that a further report will be brought to a future meeting of this Policy Board, when relevant legislation has been finalised, with an update on implications for the Service and residents.

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## 3. Background

- 3.1 Smoking is the single-most preventable cause of ill health, disability, and death in the UK. It is responsible for around 80,000 deaths a year, including [8,300 deaths per year in Scotland](#). No other consumer product kills up to two-thirds of its users. In 2022, the Office for National Statistics reported that 6.4 million people in the UK were active smokers. This represented 12.9% of the UK population, and [13.9% of the population of Scotland](#).
- 3.2 While existing legislative controls have reduced the uptake of tobacco use in younger persons, the use of Nicotine Vapour Products (NVPs, e-cigarettes or "vapes") has grown at a concerning rate. Action on Smoking and Health (ASH) report that the number of children using vapes has tripled in the past three years, and that [20.5% of children in Great Britain](#) had tried vaping in 2023.

- 3.3 As Health is a devolved matter in Scotland, Scottish Government have aspired towards a smokefree future for some time. In 2008, Scottish Government began an Action Plan to move towards a smoke-free future for Scotland; later publishing a Strategy in 2013. Around that time, Trading Standards services across Scotland were provided with annual funding from Scottish Government to carry out an enhanced programme of enforcement activity to ensure that tobacco products were being properly controlled. Laterally (and in light of changing controls), this funding was extended to support enhanced activity round NVPs (initially reported to Infrastructure, Land and Environment Policy Board in November 2017).
- 3.4 In Renfrewshire, there are around 290 businesses currently registered for the sale of tobacco, NVPs or both. Businesses must register with Scottish Government to sell these products, and compliance with this requirement along with other regulatory controls is enforced by officers in Trading Standards. To date in 2023, 65% of NVP products and 77% of tobacco products exposed for sale in 49 Renfrewshire traders have been found to be non-compliant (illicit, unsafe, non-compliant or misdescribed). These products were signed over to the service for destruction and this activity is used to inform future enforcement activity. The specifics around named traders cannot be provided due to legislative restrictions imposed by the Enterprise Act 2002.
- 3.5 Board members will note that the response is supportive of a ban on sale and supply of single-use vaping products for general consumer use. Officers support a position whereby these products would be sold or supplied only as a genuine smoking cessation aid, via a referral from a medical practitioner or smoking cessation service.
- 3.6 Depending on the options settled upon by Scottish Government, it is recognised within the consultation response that the proposals will require additional funding - in particular to support businesses. It would not be possible to effectively resource this significant additional work with the existing resources available to the Local Authority.
- 3.7 A further report will be brought to a future meeting of this Policy Board, when any draft legislation is published, with an update on implications for the Service.
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## Implications of the Report

1. **Financial** – unknown at the current time.
2. **HR & Organisational Development** – unknown at the current time.
3. **Community/Council Planning** –
  - *Our Renfrewshire is thriving* – regulation of this sector will ensure that retailers maintain high standards, are effectively regulated and will reduce the negative impacts on legitimate businesses from non-compliant retailers.

- *Our Renfrewshire is well* – the proposal for a smokefree future will reduce preventable deaths in Renfrewshire by around 650 per year. There will also be a significant reduction in demand for associated health services.
  - *Creating a sustainable Renfrewshire for all to enjoy* – the potential for a ban, restriction of these products and/or requirement to recycle single-use vaping products supports the circular economy; placing an emphasis on minimising waste and maximising reuse, recycling and recovery of resources rather than treating them as waste.
4. **Legal** – it is likely that any legislation to expand the controls on tobacco or NVPs will be conferred on Trading Standards, by means of imposing a duty on the local weights & measures authority. Duties imposed on the local weights & measures authority pass directly to Trading Standards by means of a delegation given to the Director of Environment, Housing & Infrastructure. Officers in that Team are competent in existing legislation and well placed to deliver any additional controls.
  5. **Property/Assets** – None.
  6. **Information Technology** – None.
  7. **Equality & Human Rights** –
    - (a) The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report. If required following implementation, the actual impact of the recommendations and the mitigating actions will be reviewed and monitored, and the results of the assessment will be published on the Council's website.
  8. **Health & Safety** – None.
  9. **Procurement** – None.
  10. **Risk** – None.
  11. **Privacy Impact** – None.
  12. **COSLA Policy Position** – N/A.
  13. **Climate Risk** – The proposals offer an opportunity to significantly reduce the climate risk posed by these products. These single-use products use lithium parts, highlighted by environmental campaigners as a 'critical material' in the transition to net zero. Within a Renfrewshire context, one of the five Plan for Net Zero themes is circular economy, placing an emphasis on 'minimising waste and maximising reuse, recycling and recovery of resources rather than treating them as waste.'
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## List of Background Papers

(a) Background Papers – n/a.

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**Renfrewshire Council response to “Creating a smokefree generation and tackling youth vaping” – a consultation by the Department of Health & Social Care**

Full consultation can be viewed [here](#).

**Question 1 - Do you agree or disagree that the age of sale for tobacco products should be changed so that anyone born on or after 1 January 2009 will never be legally sold (and also in Scotland, never legally purchase) tobacco products?**

Agree

**Please explain your answer and provide evidence or your opinion to support further development of our approach.**

We support the move towards a Smokefree Future for our children and young people.

To further enhance this, we would suggest the inclusion of “supply” in this provision, rather than just sale. This would prevent these products being given away as free samples, or similar.

The issue of people being addicted to tobacco over the years is one that causes major health issues and in turn becomes a strain on the NHS. The prospect of a ban which will deny anyone born after 2009 the opportunity to become addicted would be a huge step in the right direction.

Although stipulated as not within scope, we would also support a similar approach being taken in relation to the sale of vaping products with a view to stopping the increasing uptake by young persons of these products.

**Question 2 - Do you think that proxy sales should also be prohibited?**

Yes

**Please explain your answer and provide evidence or your opinion to support further development of our approach.**

In Scotland, The Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 already makes it an offence for anyone to buy tobacco or Nicotine Vapour Products (NVPs) on behalf of people under the age of 18. Expanding this to future legislative controls would create a consistency in approach to proxy sales across the UK, and also protect vulnerable members of society from being exploited.

It must be noted that - while the criminalisation of this offence is an effective deterrent - it is our experience that it is much more difficult to enforce proxy purchase provisions than conventional under-age sales test purchasing.

**Question 3 - Do you agree or disagree that all tobacco products, cigarette papers and herbal smoking products should be covered in the new legislation?**

Agree

**Please explain your answer and provide evidence or your opinion to support further development of our approach.**

The Tobacco and Primary Medical Services (Scotland) Act 2010 already includes and defines smoking related products as follows: cigarette papers, cigarette tubes, cigarette filters, apparatus for making cigarettes, cigarette holders and pipes for smoking tobacco products. Including the suggested products would create a continuity in approach throughout the UK, and future proof the definition in a changing market.

It is currently a legal requirement for retail premises to display the following statement 'it is illegal to sell tobacco products to anyone under 18'. This requirement would need to be changed to align with the new age of sale/supply.

**Question 4 - Do you agree or disagree that warning notices in retail premises will need to be changed to read 'it is illegal to sell tobacco products to anyone born on or after 1 January 2009' when the law comes into effect?**

Agree

**Please explain your answer and provide evidence or your opinion to support further development of our approach.**

We are of the view that the Statutory Notice should remain and that the wording should reflect the policy change for continuity in all premises. A Statutory Notice demonstrates due diligence, and may deter any sale of tobacco or age restricted products. This also gives shop keepers and traders the opportunity to point out the legislative position, to anyone attempting to purchase tobacco illegally.

**Question 5 - Do you agree or disagree that the UK Government and devolved administrations should restrict vape flavours?**

Agree

**Please explain your answer and provide evidence or your opinion to support further development of our approach.**

With evidence indicating that children and young persons are attracted by the fruit flavours and odours of vapes, restricting the flavours would assist in reducing the continuing popularity and uptake of vaping in young persons. There can be no doubt that these flavourings are appealing to children.

Whilst research indicates that flavour may assist adults in transitioning from smoking to using NVPs as a tobacco cessation product, any continued availability could potentially lead back into the mainstream market, particularly with unscrupulous retailers. There is anecdotal evidence that flavoured NVPs are acting as a gateway product to smoking, for adults who have never used tobacco previously.

Restricting the flavour to tobacco would replicate the conventional smoking taste that the seasoned user was accustomed to, as opposed to a potentially more attractive alternative which could bring with it, it's own habit forming or addiction issues.

As a comparison, nicotine replacement products (such as nicotine lozenges and nicotine gum) marketed and licensed as medicinal products, are marketed in only a few different flavour options.

**Question 6 - Which option or options do you think would be the most effective way for the UK Government and devolved administrations to implement restrictions on flavours? (You may select more than one answer)**

- Option 1: limiting how the vape is described
- Option 3: limiting the characterising flavours (the taste and smell) of vapes

**Please explain your answer and provide evidence or your opinion to support further development of our approach.**

The preferred option(s) would be Options 1 and 3; however any limitation on the characteristic flavours would be inextricably linked to Option 2.

If the position was to place Nicotine Vapour Products within the consumer market as a smoking cessation aid only (in a similar manner as other countries have adopted); having tobacco only flavour would be best placed to fill this space. Option 1 would allow a standardisation of descriptions in way the current Regulations do, in relation to enabling the removal of attractive or appealing terms and replacing this with factual information and advisory warnings (Standardisation of Packaging of Tobacco Products Regulations 2015).

**Question 7 - Which option do you think would be the most effective way for the UK Government and devolved administrations to restrict vape flavours to children and young people?**

- Option A: flavours limited to tobacco only

**Please explain your answer and provide evidence or your opinion to support further development of our approach.**

The EU Tobacco Product Directive banned the use of menthol cigarettes throughout Europe in 2020 due to their popularity with young persons, so to permit Option B would appear to be counter-productive.



As this consultation is designed to address the use of these products by children and young people, the most effective way to restrict access to vape flavours is to limit the flavour of vape available. Option A would therefore be the preferred outcome, as – in any case where these products continue to be sold - our view is that vapes should be restricted to tobacco flavour.

**Question 8 - Do you think there are any alternative flavour options the UK Government and devolved administrations should consider?**

No

**Please explain your answer and provide evidence or your opinion to support further development of our approach.**

There are no additional flavours that have been identified for consideration. The preference is for a tobacco-only flavoured product, designed and controlled as a smoking cessation aid.

**Question 9 - Do you think non-nicotine e-liquid, for example shortfills, should also be included in restrictions on vape flavours?**

Yes

**Please explain your answer and provide evidence or your opinion to support further development of our approach.**

It is the view that all restrictions considered should be implemented across both the non-nicotine e-liquid and NVP market.

Many of the non-nicotine vapes include ingredients for use in food products. The vaping process heats and vaporizes these ingredients, and there is little research that suggests food-grade ingredients are safe for vaping.

If the same flavour restriction is not applied uniformly to all vape formats, there is a risk of problem shifting and children and young persons continuing to use habit-forming non-nicotine products, irrespective of concerns in respect of longer-term health issues.

**Question 10 - Which option do you think would be the most effective way to restrict vapes to children and young people?**

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

**Please explain your answer and provide evidence or your opinion to support further development of our approach.**

It is our belief that – in the absence of a position whereby these products are sold or supplied as a smoking cessation aid only - these age-restricted products should be regulated in much the same way as tobacco products, which in Scotland includes a display ban.

We would be very supportive of the Scottish Government bringing this measure in as soon as possible under provisions in the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016, which would also end free samples among other measures. Reduced visibility could also lead to a reduction in pro-vaping attitudes. A display ban would need to be accompanied by restrictions on in-store advertising of vaping products, including generic vape advertising. Advertising of vapes in general needs to be enhanced to reduce the exposure of children and non-smoking adults to these products.

Anecdotally, our Officers report that many standalone retail shops display vape products on a shelf nestled between crisps and sweets. While this is challenged, and robust advice provided, there is no legal basis to prevent this at the current time.

**Question 11 - Do you think exemptions should be made for specialist vape shops?**

Don't know

**Please explain your answer and provide evidence or your opinion to support further development of our approach.**

Many vape shops currently sell other products, such as crisps & sweets or mobile phone cases/chargers. If any exemption is to be offered, the definition of a specialist vape shop would need to be clear and unambiguous as to its meaning; much like a traditional tobacconist in Scotland, where they only sell tobacco and smoking related products.

This would also mean vape displays or any advertising inside the store, must not be visible from outside. Entry to shops should be for strictly over 18s (or older if vape age restrictions are changed similar to the proposals for tobacco products). As previously stated, advertising of vapes in general needs to be enhanced to reduce the exposure of children and non-smoking adults to promotion of these products.

**Question 12 - If you disagree with regulating point of sale displays, what alternative measures do you think the UK Government and devolved administrations should consider? Please explain your answer and provide evidence or your opinion to support further development of our approach.**

We do not disagree with the regulating point of sale display.

**Question 13 - Which option do you think would be the most effective way for the UK Government and devolved administrations to restrict the way vapes can be packaged and presented to reduce youth vaping?**

- Option 2: prohibiting the use of all imagery and colouring on both the vape packaging and vape device but still allow branding such as logos and names

**Please explain your answer and provide evidence or your opinion to support further development of our approach.**

Option 2 would be the most effective way to restrict the way vapes could be packaged and presented, to reduce youth vaping and to ensure retailer compliance.

There should be no use of cartoon, characters etc. on the vape devices as they are child appealing. There should be no colour on the vapes as children and young persons are drawn to the colours and anecdotal evidence suggests some match the vape colour with their outfits.

Branding on vapes is not known to have any effect on purchase. Current legislation around standardisation of packaging of tobacco has removed the link between branding and use/purchase, which primarily existed due to the strength of tobacco advertising. That link is not known to exist between vape users and these products, with choices instead being made due to colour, flavour, tank size or price.

Great Britain should ensure that they are keeping in line with other countries that are introducing the standardised packaging for vapes, in line with existing controls on tobacco packaging. Consistency increases compliance amongst the retail community, and highlights non-compliance easily to the enforcement community.

**Question 14 - If you disagree with regulating vape packaging, what alternative measures do you think the UK Government and devolved administrations should consider? Please explain your answer and provide evidence or your opinion to support further development of our approach.**

We do not disagree with the introduction of regulating vape packaging.

**Question 15 - Do you agree or disagree that there should be restrictions on the sale and supply of disposable vapes? That is, those that are not rechargeable, not refillable or that are neither rechargeable nor refillable.**

Agree

**Please explain your answer and provide evidence or your opinion to support further development of our approach.**

The single use of intensively sourced materials (particularly lithium batteries damages the environment and water courses when disposed of incorrectly. Our residents report that our natural spaces are blighted through littering of these products; which are harmful to the ecosystem. These products are also very wasteful in terms of their single use purpose which is completely against our Council's ethos under our Ren Zero policy, particularly the circular economy theme.

Here in Scotland, The Environmental Protection (Single Use Plastic Products) (Scotland) Regulations 2021 introduced ban on single use plastic cutlery, balloon sticks, polystyrene cups and food containers, single use plastic plates, trays and bowls. We have also seen Scottish Government introduce legislation to manage and control the disposal of batteries and products containing batteries – The Waste Batteries (Scotland) Regulations 2009.

During visits, our Trading Standards team promote the Waste Electrical and Electronic Equipment Regulations 2013 'takeback scheme' and The Waste Batteries (Scotland) Regulations 2009, for the safe disposal of batteries. Visits suggest that compliance with these regulations is very low.

**Question 16 - Do you agree or disagree that restrictions on disposable vapes should take the form of prohibiting their sale and supply?**

Agree

**Please explain your answer and provide evidence or your opinion to support further development of our approach.**

This Council agrees that the preferred solution would be to introduce a ban on consumer sale/supply of disposable vape products. Council Motion 1 of 2 March 2023 supports this position.

Some of the on the market products have much higher levels of nicotine than cigarettes, and may be more addictive. A single use vape with a 2ml tank could contain up to 40mg of nicotine (20mg per ml), whereas a packet of 20 cigarettes could contain up to 20mg of nicotine (1mg per cigarette). A single use vape is far easier to consume than a pack of 20 cigarettes.

We would support a prohibition on the sale (or supply) to anyone born on or after 1 January 2009 in line with the proposal in Question 1 for tobacco products. This would not prevent current adult smokers from using vapes as an aid to quit smoking, but would make it more difficult for children to start. There could however still be a route for persons born on or after January 2009 to access these products as an aid to quit smoking but perhaps in a more controlled manner, e.g. as an aid to stop use, via Smoking Cessation professionals, a GP or Pharmacist, who can also consider other products such as nicotine replacement medicinal products.

Our services report that complaints alleging that children are obtaining and using disposable vapes continue to increase. The penalties currently available are not sufficiently punitive as to discourage further sales.

It has been evidenced that there are both compliant and non-compliant vape products on the market. It is also known that young persons are routinely buying these products. It therefore follows that young people are being exposed to potentially non-compliant vape products, and will be more vulnerable to negative health effects.

In addition, there is a significant concern regarding the disposal of vapes with many of these products found scattered around the local community. Disposable vapes include chemicals which are harmful to the environment and are a fire risk. The costs and resources to monitor and manage these issues are an additional burden to Local Authority.

Evidence indicates (ASH Scotland) that between 2020 and 2023 the use of disposable e-cigarettes increased ten-fold among 11-17-year-olds. It should be noted, that nearly all disposable e-cigarettes come in the maximum 20mg/ml (2%) nicotine concentration. These devices also use nicotine salts, which can increase addiction potential. The increase in the use of disposables coincided with overall increase of e-cigarette use.

Anecdotally, our young people in Renfrewshire report witnessing many other young people vaping in front of peers and younger children. Young people also report peers using lunch money to buy “vapes” rather than buying food, and allege that they see peers going on to try drugs after vaping or smoking. Parents report their children becoming ill at school from refusing to use hygienic facilities due to the proliferation of vape use in and these facilities.

Prohibiting disposable vapes would remove these burdens and would significantly reduce the risks highlighted to children and the environment.

**Question 17 - Are there any other types of product or descriptions of products that you think should be included in these restrictions?**

**Please explain your answer and provide evidence or your opinion to support further development of our approach.**

The current regulatory framework establishes the definition of products like disposable vapes and e-cigarettes, for example The Tobacco and Related Products Regulations 2016 and in Scotland, the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016.

Definitions and descriptions differ and may cause some confusion. A UK-wide agreed and standardised interpretation; future-proofed to mitigate against future technology and development in this market, would be welcomed.

If bringing in such a prohibition, we would recommend a ban is imposed on the importation of disposable vapes to the UK (and indeed vapes that are non-compliant for any other reason), with such ban including importation for any reason and including consignments that are “passing through”.

**Question 18 - Do you agree or disagree that an implementation period for restrictions on disposable vapes should be no less than 6 months after the law is introduced?**

Agree

**Please explain your answer and provide evidence or your opinion to support further development of our approach.**

Whilst a short implementation period for restrictions on disposable vapes is welcome, there is some concern about the practicalities of this, and the financial impact on business.

Trading Standards services visit around 20% of tobacco/NVP retailers per year as part of an enhanced programme of activity around these products. These Officers are well placed support businesses through this transition by use of the 4 E’s – engage, explain, encourage, then enforce; however this could not be done in this timescale without significant additional funding to bolster resource.

**Question 19 - Are there other measures that would be required, alongside restrictions on supply and sale of disposable vapes, to ensure the policy is effective in improving environmental outcomes?**

**Please explain your answer and provide evidence or your opinion to support further development of our approach.**

In Renfrewshire, Trading Standards have found that the level of compliance with The Waste Electrical and Electronic Equipment Regulations 2013 'takeback scheme' and The Waste Batteries (Scotland) Regulations 2009, for the safe disposal of batteries, is very low.

There have been some examples of disposal recycling schemes run by particular brands of disposable vapes offering retailers selling their product access to disposal units, though there appears to be a very low uptake in this scheme by retailers. It has also been noted that some of the major supermarket operators have implemented facilities where disposable vapes can be disposed of but uptake by consumers is very low in comparison to purchases. This may be due to lack of awareness raising.

If these vapes are not prohibited, other options to improve environmental options are:

- Requiring products to be described as "recyclable" instead of "disposable" to highlight to consumers that the products should be recycled,
- Consideration of applying excise duty to vaping products and with a high rate of duty applied to the products that are single use or limited use products, or
- A surcharge on disposable vapes whereby a consumer returning a used disposable vape to the retailer will be given a refund or reduction in cost when purchasing a new disposable vape.

**Question 20 - Do you have any evidence that the UK Government and devolved administrations should consider related to the harms or use of non-nicotine vapes?**

Don't know

**Please explain your answer and provide evidence or your opinion to support further development of our approach.**

We have no direct evidence of harms, however it is fair to consider that non-nicotine vapes could be a precursor to individuals then experimenting with nicotine vapes and increasing the likelihood of addiction.

It is known that there are concerns that vaping of any product may cause adverse effects due to the aerosol particles.

The current product safety regime determines that before a product can be placed upon the UK/GB market that the manufacturer/importer is able to evidence the safety of the product. This requires following specific legislation requirements and industry standards etc. A similar approach to manufacturers of any nicotine or non-nicotine based products would be welcome.

**Question 21 - Do you think the UK Government and devolved administrations should regulate non-nicotine vapes under a similar regulatory framework as nicotine vapes?**

Yes

**Please explain your answer and provide evidence or your opinion to support further development of our approach.**

It is the view that non-nicotine vapes should be regulated in exactly the same way as nicotine based vapes, until such times as evidence is provided to support the notion that non-nicotine based products are not harmful or as harmful as nicotine based products.

Current product safety regime determines that before a product can be placed upon the UK/GB market that the manufacturer/importer is able to evidence the safety of the product. This requires following specific legislation requirements and industry standards etc. A similar approach to manufacturers of any nicotine or non-nicotine based products would be welcome.

**Question 22 - Do you have any evidence that the UK Government and devolved administrations should consider on the harms or use of other consumer nicotine products such as nicotine pouches?**

No

**Please explain your answer and provide evidence or your opinion to support further development of our approach.**

We are unable to directly evidence the harms of other nicotine products, however are of the view that the inclusion of nicotine or any chemical for that matter should only be permitted where evidence can be presented that it does not cause harm or is harmful to human beings.

We would like to see the current regulatory framework establish an appropriate definition of nicotine-based products consistently applied across the 4 nations, to ensure a consistent approach to these products. This definition should be future-proofed to ensure that - as advancements in technology and development of e-cigarettes and Nicotine Vapour Products are made - the definition remains fit for purpose.

The current regulatory framework defines products like disposable vapes and e-cigarettes, The Tobacco and Related Products Regulations 2016 and in Scotland, the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016

Current product safety regime determines that before a product can be placed upon the UK/GB market that the manufacturer/importer is able to evidence the safety of the product. This requires following specific legislation requirements and industry standards etc.

A similar approach to manufacturers of any nicotine or non-nicotine based products would be welcome.

**Question 22 - Do you think the UK Government and devolved administrations should regulate other consumer nicotine products such as nicotine pouches under a similar regulatory framework as nicotine vapes?**

Yes

**Please explain your answer and provide evidence or your opinion to support further development of our approach.**

We are of the view that all consumer nicotine products should be regulated under a similar regulatory framework, consistently applied across the 4 nations, to ensure a standardised approach to these products.

A similar approach to manufacturers of any nicotine or non-nicotine based products would be welcome.

Local intelligence indicates that there have been incidents where free samples of nicotine pouches have been ordered online in different strengths where no ID or restrictions to buy on-line were required.

**Question 23 - Do you think that an increase in the price of vapes would reduce the number of young people who vape?**

Yes

**Please explain your answer and provide evidence or your opinion to support further development of our approach.**

It follows that increasing the price reduces the availability of what can be – at the current time – a “pocket money purchase”. Anecdotal evidence suggests however, that young persons are pooling money together to share disposable products at the current time and as such a price hike alone will not be sufficient.

**Question 24 - Do you think that fixed penalty notices should be issued for breaches of age of sale legislation for tobacco products and vapes? Powers to issue fixed penalty notices would provide an alternative means for local authorities to enforce age of sale legislation for tobacco products and vapes in addition to existing penalties.**

Yes

**Please explain your answer and provide evidence or your opinion to support further development of our approach.**

The correct tools to enable effective and proportionate enforcement should be at the heart of any criminal legislation. These tools, alongside penalties, must be reasonable and proportionate to the practices the legislation seeks to criminalise. They must also act as a deterrent and be punitive in nature.



While Fixed Penalty Notices are an important enforcement outcome, they cannot operate in isolation and must be part of a package of tools available to local authorities. For this sector, consideration should also be given to banning orders (available in Scotland after three underage sales at a premises).

The Tobacco and Primary Medical Services (Scotland) Act 2010 creates an offence for a person to sell a tobacco product (or cigarette papers) (section 4) or a nicotine vapour product (section 4A) to anyone under the age of 18. Section 27 gives an enforcement officer the power to issue a person a fixed penalty notice where there are reasons to believe that the person has sold a tobacco product (or cigarette papers) or a nicotine vapour product to someone under the age of 18. Legislation in Scotland therefore allows for fixed penalty notices to be issued for breaches of age of sale legislation for tobacco products and vapes. Extension of this across the UK would be preferred.

**Question 25 - What level of fixed penalty notice should be given for an underage tobacco sale?**

- Other

**Please explain your answer and provide evidence or your opinion to support further development of our approach.**

The approach taken on the enforcement of the underage sales of these products must be consistent. There should be one set of rules, and one set of enforcement tools / penalties (as much as feasibly possible) to avoid confusion for businesses and consumers, and to ensure effective and efficient enforcement is not overcomplicated.

A Fixed Penalty Notice must act as a deterrent while also being punitive. Set too low it may not do either; set too high it may go unpaid, resulting in neither outcome being met.

In Scotland there is a rising scale for fixed penalty notices issued under the Tobacco and Primary Medical Services (Scotland) Act 2010. These start at £200 for a first offence, £400 for a second offence, rising incrementally to a maximum £1000. £200 should therefore be considered as the minimum level of a fixed penalty notice but there should be a rising scale where there are repeat underage sales by the same person/business, mirroring what is currently in place in Scotland. Ideally however, it would be beneficial for penalties for this offence in particular to be raised significantly across all four Nations.

While fixed penalty notices are an important enforcement tool, they cannot operate in isolation and must be part of a package of tools available to local authorities. They will only work if there remains the threat of other sanctions instead of them, or where they go unpaid, up to and including prosecution. Consideration should also be had to banning orders (available in Scotland after 3 underage sales at a premises).

In Scotland, retailers are also required to register with Scottish Government if operating a tobacco or nicotine vapour product business. Their details appear on a public register, which has been a useful enforcement tool in helping identify retailers of tobacco and nicotine vapour products. While the register has been a useful innovation in Scotland, a requirement for businesses to gain a licence may be an alternative. If businesses are required to obtain licences and renew on an ongoing basis, this could assist with ensuring information is still accurate, there could be the ability to restrict the number of outlets if desired and it may also give a better route to effectively “banning” businesses from supplying tobacco products and nicotine vapour products in relation to businesses that there are concerns about their compliance with the legislation.

**Question 26 - What level of fixed penalty notice should be given for an underage vape sale?**

Other

**Please explain your answer and provide evidence or your opinion to support further development of our approach.**

The approach taken on the enforcement of the underage sales of these products must be consistent. There should be one set of rules, and one set of enforcement tools / penalties (as much as feasibly possible) to avoid confusion for businesses and consumers, and to ensure effective and efficient enforcement is not overcomplicated.

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