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Policy Note

AGE RESTRICTIONS OF VAPE PRODUCTS

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OVERVIEW

A report commissioned by Public Health England (PHE) in early 2020 affirmed that nearly two-thirds of 11-to-17-year-olds in the United Kingdom who currently vape more than once a month had bought products themselves.

Numbers like this often lead to prohibitionist calls for further bans and restrictions on vaping products. A sober analysis of the problem shows that most countries already prohibit nicotine products for people younger than 18 or 21. Hence bans are not the solution but rather better and smarter enforcement of existing age-restriction laws.

Further bans of vaping products will drive more consumers to illegal products on the unregulated black market, where there is no guarantee of safety or quality. A larger black market will make it even easier for minors to purchase vaping products with no age verifications at all.

This policy note takes a closer look at the debate around age restrictions of vaping products, shows best practices from the vaping sector and other industries, and provides policy suggestions.



BEST PRACTICE

We should not tolerate teen vaping, and any rise in numbers is concerning. Still, we cannot at the same time deprive millions of adult smokers of safer alternatives ([according](#) to Public Health England, vaping is at least 95% less harmful than traditional smoking) because of activities that are already illegal. Age restrictions are not limited to nicotine products, but many services and goods sectors have to comply with age restrictions. Examples include kitchen knives, fireworks, aerosols, lotteries, gambling, sports betting, alcoholic beverages, movies, and video games.

In the United States, [only half of the vape and tobacco shops](#) ask young customers for their ID. In France, more than half of all tobacconists sell to customers under the age of 17, 10% even agree to sell to those under 12 years of age. 20% of French tobacconists do not ask for identification. The lack of compliance with existing laws perpetuates the problem and turns public opinion against the idea of vaping as a means of giving up smoking. This is an obvious problem of enforcement. But there are also existing examples of where retail and industry should move to that are effective.

Services such as [AgeChecked](#) already allow vendors of online shops to implement smart age verification tools. Such age verification services come at additional costs for retailers. The compliance costs should be kept in mind when considering additional taxes and levies on age-restricted products. Other services such as [Experian](#) offer similar solutions and should help online retailers comply with age restrictions in their markets. In countries with a national ID system like Germany, retailers can ask for the ID during an online purchase and verify the age in real-time.

From the online retailer VapeSuperstore [this best-practice model](#) for online sales of vaping products should serve as an excellent example of industry enforcement of rules:

“When creating an account or placing an order with Vape Superstore we will request your full name, billing address and date of birth. This must be entered as it would appear on your drivers license, electoral roll or used for a UK credit card. This information must be entered correctly as we will use it to verify your age before delivering any goods. To securely verify your age Vape Superstore use [Agechecked](#) services to verify your age, please note that is purely an ID check and not a credit check so will not affect your credit score in any way. If for any reason, such as a recent change of

address or name change, Agechecked are not able to confirm your age, you may be asked for further valid proof of age document details such as a UK Drivers License or Passport.”

Similar processes should be followed on all online retail platforms and adjusted in countries where ID or credit card information is not available. As mentioned above, some data from the United States and France suggest that brick and mortar stores still lack age restriction enforcement.

An additional way of improving online retailers’ compliance with the law would be to link these product categories to an attribute that shows the age limitation of that transaction on the purchaser’s credit or debit card. Credit cards already categorize purchases as, e.g., gasoline or meal expenses. Therefore, only cardholders of the legal vaping age and older would be allowed to make online and offline purchases of these products. Online and brick and mortar lottery shops often use similar age verification tools.

Germany’s tobacco vending machines are an example of technology-driven and smart age verification. Since [2009](#) all German tobacco vending machines must be equipped with a chip reader that reads German IDs, driving licenses, or debit cards (that have the owner’s ages saved on it). Tobacco products are only sold if the buyer can successfully verify his or her age.

The UK’s retail initiative ‘[Challenge 25](#)’ that asks retail staff to ask everyone who looks younger than 25 who wants to purchase alcoholic beverages for proof of age identification is a good example of retail improving its age verification systems without additional regulation or bans. The Retail of Alcohol Standards Group developed the project.

Some of the results of the campaign can be seen in the following points :

- An analysis shows off-trade (such as supermarkets and shops) test purchasing pass rate was 79%, which is significantly higher than the 69% for on-trade (such as bars and restaurants).
- Only 4% of under-age consumers would attempt to obtain alcohol from a large supermarket compared to the 74% that would attempt to obtain alcohol from their parents;
- It is estimated that 850,000 people in the UK are trained in applying the *Challenge 25* campaign each year.

The fact that large chains seem to have a better track record with carding their customers suggests that policy proposals to limit the sale of flavored nicotine liquids to specialized shops are somewhat counter-productive. Large retailers often have more resources to push for better enforcement of the existing rules and can do this at scale. The training for new employees is usually also more refined at larger chains.

Food delivery apps such as Deliveroo have additional ways to increase compliance rates. When customers order alcoholic beverages with their food, the delivery driver is prompted by the app to ask for the buyer's ID or date of birth.

The alcohol industry and alcohol retail have used effective and smart methods to educate their staff, inform consumers, and enforce existing age restrictions. A similar initiative of vape retailers and manufacturers could help increase compliance with existing laws. An industry commitment to punish black sheep in the retail sector by not supplying a shop with more than two violations could also be a useful tool that would help legal consumers keep having access to vape products.

According to the [World Bank's research](#), nearly 20% of humans do not have a way to prove their identity. Fortunately, new technologies such as blockchain applications aim to solve this problem as high accessibility and low costs for these, often poor, people. The global success of age verification systems, especially in emerging markets, also requires a more modern and agile approach of governments to accept new technologies to prove one's identity.

[Decentralized identifiers](#) (DID) based on the Ethereum blockchain and government eID programs such as the Swiss Zug Digital ID are some ideas on how to introduce better age verification for the ever-growing online retail space.



ENFORCEMENT & FINES

Countries and jurisdictions handle the punishment of violations of age restrictions in different ways. Some states already have high fines and seem to be successful in enforcing their age restriction laws.

Even within a country, the fines for violations often depend on the category type. For instance, in the United Kingdom, [a video game seller](#) can be fined up to 20,000 GBP for selling age-restricted games to underaged customers. At the same time, a vendor selling vaping liquids to minors comes with a maximum fine of merely 2,500 GBP, an eighth compared to video games. Given that [one study](#) found that 5 out of 9 shops sell vaping products to minors, the UK's fines might need to be adjusted upwards.

Fines in [Germany](#) for selling vape products to minors are nearly 20-times higher than in the United Kingdom and can go as high as 50,000 EUR. These stricter punishments came into place in [2016](#) and had the support of most vape shops and online retailers.

In the Canadian province of Ontario, a tobacco retailer is [fined](#) (ranging from 490-300,000 CAD) and can lose their license to sell tobacco products if caught failing to ID a minor. If a retailer [has two sale offenses](#) within a five year period, they are prohibited from selling tobacco products for six months. For three offenses, that prohibition is extended to 9 months. Four violations extend the ban to 12 months. These strict rules are likely why Ontario retailers [have a 95.7% ID rate](#).



POLICY RECOMMENDATIONS

The sales ban of tobacco products or harm-reducing products to consumers below the legal age must be better enforced. There exists a large consensus that nicotine products should only be available to adults. In most countries, this is either from the age of 18 or 21. The above-shown examples of smart initiatives and innovative technologies on how to increase retail compliance rates by asking customers for IDs are straightforward ways forward towards reduced sales to minors.

Policymakers might consider, on a case by case basis, whether increasing fines for repeat non-compliance might be an adequate tool to ensure enforcement of the law as well. Furthermore, temporarily removing the sales license for nicotine products in jurisdictions where such licenses exist might be another effective option for improving enforcement. First and foremost, a more coordinated approach by both retail and manufacturers of vaping devices similar to what the alcohol industry has achieved in many countries, can and should be explored.

We believe that the strict enforcement of nicotine age rules marks the distinction between consenting adult consumers and those who have not reached the legal age to make these decisions. Black markets do not have any age verification process and it is generally said that illegal actors usually don't distinguish between minors and consumers of legal age. Hence, it is paramount to understand that increasing compliance rates on legal markets is the way forward instead of introducing further bans and restrictions on vaping products. Additional restrictions will only fuel black market activity and lead to the opposite of what they intend: More minors having access to vaping products.

To reduce the rate of vapers who are minors, the Consumer Choice Center recommends the following:

- Enforce strict age restrictions on vaping devices and liquids at the point of sale.
- Use modern age-verification technology for online sales.
- Learn from other industries such as alcohol and fireworks on how to improve compliance rates.
- Retail and industry should be encouraged to be more proactive with the enforcement of rules.
- Don't punish legal adult vapers for the lack of enforcement of age restrictions.

ABOUT THE AUTHOR

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Fred Roeder is a consumer advocate at heart. He has been working in the field of grassroots activism for over ten years. He is a Health Economist from Germany and has worked in healthcare reform in North America, Europe, and several former Soviet Republics. One of his passions is to analyze how disruptive industries and technologies allow consumers more choices at a lower cost. He also loves researching how innovation makes our lives better.

Fred is very interested in consumer choice and regulatory trends in the following industries: Consumer Goods, Healthcare, Sharing Economy, Airlines.

In 2014 he organized a protest in Berlin advocating for competition in the Taxi market. Fred has traveled to over 100 countries and is looking forward to visiting the other half of the world's countries.

Among many op-eds and media appearances, he has been published in the Frankfurter Allgemeine Zeitung, Wirtschaftswoche, Die Welt, the BBC, BILD, ABC Portland News, Montreal Gazette, Daily Mail, Handelsblatt, Huffington Post Germany, CityAM, L'Agefi, and The Guardian.



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