

Response to the Single-Use Vapes prohibition:

About the Consumer Choice Center:

The Consumer Choice Center is a non-profit organisation dedicated to defending the rights of consumers around the world. Our mission is to promote freedom of choice, healthy competition and evidence-based policies that benefit consumers. We work to ensure that consumers have access to a variety of quality products and services and can make informed decisions about their lifestyle and consumption.

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General comments:

- I would like to begin by thanking the Department and the relevant personnel for producing and publishing the relevant documents. Thank you in particular for the Impact Assessment (IA), a document which I did not see when Scotland produced its Single Use Vapes Statutory Instrument.
- My concern regarding the legislation being introduced by the Department for Environment, Food and Rural Affairs (DEFRA) is that it does not correctly examine the impact of prohibiting single use vapes on the tobacco harm reduction strategy the UK is taking and the livelihood of smokers who are trying to quit.
- I understand that the legislation must be introduced by DEFRA, due to the use of the Environmental Protection Act (1990) for implementation. But the scope to which the department can argue for its case is environmental, and upon examining the IA, it is evident that the arguments for prohibiting disposable vapes from a health perspective are weak and neglect previous Public Health England reports that establish [vaping being 95% less harmful than smoking](#).

- This could have been resolved had the disposable vapes prohibition been introduced as part of the Tobacco and Vapes Bill. This way, the legislation could have been examined by MPs, Peers and their respective select committees to establish the effectiveness of a prohibition on disposable vapes. The department would work with Parliament in producing these impact assessments and scrutinise the legislation properly. This would also give the legislation more legitimacy, transparency and accountability and a chance for the public to write to their MPs regarding the prohibition.
- This then leaves the environment argument for prohibiting disposable vapes, which is the core part of this legislation. The IA correctly notes that vapes can have an impact on the environment if not recycled properly. However, prohibiting disposables will not solve the problem. This is because reusable vapes are also discarded without recycling. This would then set a precedence to prohibit anything that causes environmental harm, which in due time would be reusable vapes.
 - As such, the decision not to examine a deposit return scheme for all types of vapes, as per point 37 of the IA, will be detrimental to the future of the environment and vape products.
 - Additionally, a solution to combat the environmental impact of disposable vapes is to take advantage of the UK's departure from the EU, the European Commissions' Tobacco Products Directive and the Tobacco and Related Products Regulations 2016 (TRPR) . At the moment, [tank capacity is limited to only 2ml](#), which is generally agreed to be around 500-600 puffs. This is not only more expensive for consumers in the longer run, but more environmentally damaging due to the short life of vapes driven by the constraints of existing regulations. In the sole context of disposable vapes, which is the purpose of this consultation, if the government were to increase the tank capacity limit, it would allow individuals to use their disposable vapes for a longer period of time and throw less vapes away. This can also be extended to reusable vapes and be part of a wider strategy to encourage recycling and more environmentally friendly consumption by information campaign, deposit return scheme and disposal infrastructure.
- Therefore, the ideal mechanism for DEFRA to have addressed the issue of the environmental impact of disposable vapes was to have encouraged and funded recycling efforts and infrastructure, as well as increasing the restrictive limits on tanks and bottles imposed by the EU.
 - This would have been popular amongst the political decision makers, given the need to display post-Brexit control and sovereignty of UK legislation.

- It also would have been popular with the Civil Service, due to the targeted action and feasibility of application of such measures.
- Finally it would have been popular with consumers and retailers, as it allows for more efficient market exchange and less constraints on products.

- You will note the use of the word prohibition, rather than a ban in this response. The disposable vapes prohibition was introduced by the Prime Minister to curb underage vaping, which to clarify was and still is already illegal. The word ban tends to poll more favourably amongst the electorate and has shifted the debate away from the fact that this is a prohibition on disposable vape for adults and into an existing problem that Trading Standards and the government should be dealing with. As such, it is important to note that this is a prohibition of legally adult vapers, who are aware of their habits, from consuming a product of their preference.

- Finally, it is important to note that whilst it is constructive to have international cooperation in discussing public health and environmental initiatives, concerns have been raised about the impartiality of the World Health Organisation (WHO) and its influences. MPs raised such concerns in a [recent debate](#) on the matter.

Part A: Response to the draft Impact Assessment:

- The impact assessment does not seem to consider the revenue lost from VAT or import duty. Will there be an assessment of that?

- Point 4 states “it is also an offence to sell vapes to children under the age of 18 in the UK”. The IA also concedes that underage vaping is on the rise. As such, what analysis has been conducted to support the view that a prohibition will stop the demand, given that it was already illegal for those under 18 to vape?

- Consumer choice, as the IA explains, is indeed limited by the ban. But there is no analysis as to the impact of distorting consumer preferences on a micro and macro level in terms of reducing tobacco harm. For instance, what research has been conducted to examine the substitutes of disposable vapes?

- There was a mention of the New Zealand policies. The New Zealand case is inapplicable in the UK due to the difference in circumstances and nature of smoke free policy, as well as the divergence of the policy itself. The UK “generational Smoking Ban” is not identical to that of New Zealand’s.

- Point 25 states: “disposable vapes are more hazardous to the environment than single-use plastics because of the chemicals they contain as well as the battery-related fire risk they pose.”
 - This needs clarification as consumption of single use plastics is more prevalent than vaping. Is the statement factually correct per item, cumulatively or an assumption? If it is an assumption, then from where was it derived?
- Point 42 states that “vape consumers will seek [disposable vapes] them out whatever the tax burden to satisfy the nicotine cravings.” If teenagers and adults will still seek disposable vapes for their nicotine cravings, why would a prohibition work? This point explains why prohibition is not an optimal course of action for public health and environmental protection. Consumption according to that point will still persist despite the prohibition, as the IA concedes the rise of black market activities as a result of the prohibition.
 - This emphasises the need to re-examine alternative options, such as the ones I have mentioned in my general remarks, being a better course of action.
 - Points 85-86-87 highlights the IA being unable to predict consumer behaviour, but that does not justify the reason to introduce a prohibition. If the government chooses to nudge consumers and distort their indifference curves, it ought to at least make a prediction as to the expected outcome. This is far too important to be left out for the final version of the IA as the entire aim of the Prime Minister is to stop children vaping, and therefore it is important to predict whether this statutory instrument will achieve that.
- What were the criteria of the RAG ranking system? The key does not clearly and objectively define each colour, as such it would be appreciated if clarifications are made as to how the rankings were made objectively.
- Point 145 is not realistic or feasible. There is no economic assumption which assumes 100% compliance from business with regards to supply of disposable vapes. Furthermore, as the IA has pointed out, current black-market prevalence could be as big as the legal market, which will only increase in the future with a prohibition. Trading Standards will not be able to curb that given the funding it will be receiving.
- In regards to point 148 on the difficulty of definition of a disposable vape, this is a bigger problem for enforcement officers who will need to be trained and will be making the decision as to whether the vape is disposable or not. There should also be a compensation scheme in place for wrongful application of the definition and a review. Given the rapid evolution of technology and vaping equipment, it will be difficult to close these loopholes.

Part B: Response to the Explanatory Notes and Draft Statutory Instrument:

- The explanatory notes do not explain why single-use vapes have been defined in the manner they are, which is also included in the draft legislation.
- The explanatory notes do not explain why the review period by the Secretary of State in page 6, paragraph 12 is 3 years and not some other timeframe.

Concluding Remarks:

- The period of time we were given to respond to this consultation has been far too short, especially for a legislation as significant as a prohibition.
- I have outlined all these points in bullet point format and in a concise manner due to the anticipated volume of responses the department will be receiving. Should a representative from DEFRA or any other department wish to meet to discuss some points further, I am willing to arrange a meeting to discuss these points.
- There are more targeted measures which will help reduce the environmental impact of vapes without having to do down this route. The response provided not only asks for clarification and explains some key issues, but also suggests practical alternatives that are pragmatic and feasible for all.
- Thank you for accepting responses to the draft documents and in helping to clarify some of the points in these documents. I look forward to hear back from you.

Best Wishes,

Mike Salem, UK Country Associate at the Consumer Choice Center.