

# Tobacco and Related Products Regulations (TRPR)

A Blueprint for Better Regulation



UKVIA

UK Vaping Industry Association



# Foreword – The Opportunity Before Us

## The vaping sector

It is vital that the benefits of vaping products are fully understood to maximise the positive impact on public health. It is crucial that an evidence-based approach to revising UK regulations to further support vaping will enable more adult smokers to switch and ultimately quit smoking.

The Tobacco and Related Products Regulations (TRPR) are the primary regulations which govern e-cigarette and vape products in the UK, derived from the implementation of the EU's Tobacco Products Directive (TPD). In the UK, the Department of Health and Social Care (DHSC) has an obligation to review the TRPR by May 2021. The TRPR review process has now commenced, with a public consultation of the Regulations. Having left the European Union (EU), the review of the TRPR represents a huge opportunity for the Government to:

- 1. Improve public health by tackling the misinformation that surrounds vaping and deters smokers from making the switch**
- 2. Seize the opportunities to forge an independent regulatory path presented by leaving the European Union**
- 3. Continue to be an advocate for vaping**

Whilst there are already 3.2 million adults in Great Britain who have made the switch to vaping<sup>1</sup>, there are still millions more who continue to smoke cigarettes. According to the Office for National Statistics (ONS), 14.1% of adults smoke - this equates to around 6.9 million people.<sup>2</sup>

The review of the TRPR should be used to further accelerate the potential role of vaping as an effective way of reducing smoking rates and improving public health. Failure to take advantage of this opportunity would be a disservice to the contribution that vaping has already made to improving the lives of adult smokers and the good progress that has already been seen across the UK. With an agenda to 'level up' across the country, the UK Government must present smokers with appropriate access to less harmful alternatives and accurate information about the products available to them.





## Vast inequalities

In this country, there are vast inequalities attributable to or associated with smoking. For example:

1. **Smoking prevalence is around 12% higher amongst the unemployed compared to those in employment,<sup>3</sup> and roughly 2.5 times higher among those in manual labour when compared to managerial and professional employment**
2. **Those with no educational qualifications are more likely to smoke (28.3%) compared to those with degree level qualifications 7.8%<sup>4</sup>**
3. **Around 40% of smokers reported suffering from some form of mental illness compared to 16.5% of all adults<sup>5</sup>**

Professor Ann McNeill, Professor of Tobacco Addiction at King's College London, and lead author of Public Health England's (PHE) seventh independent report on vaping in England said:

**'What is concerning is that smokers, particularly those from disadvantaged groups, incorrectly and increasingly believe that vaping is as harmful as smoking. This is not true and means fewer smokers try vaping.'**<sup>6</sup>

A huge reduction in health inequalities could be realised through collective efforts on reducing the harm of smoking and improving the perception of vaping.





## Legislative independence

The review of the TRPR presents one of the first opportunities for the UK Government to demonstrate its legislative independence outside of the EU. Taking this opportunity to build on and enhance the current framework will allow the UK to further develop its existing world-leading position towards vaping, created using the wealth of knowledge held by some of the country's leading health professionals and bodies. Indeed in 2018, the UK Parliament's Science and Technology Select Committee's e-cigarette report called for a review of the EU regulations governing e-cigarettes and novel tobacco products after the UK's departure from the EU.<sup>7</sup> It is also important that UK regulations stay relevant to changing consumer trends and any market and technological developments.

By enhancing the TRPR and introducing changes supportive of vaping to the Government's Tobacco Control Plan when it is reviewed later this year, the UK Government will be well on its way towards realising its ambition of making England Smokefree by 2030.<sup>8</sup>

In the EU, 26% of citizens smoke and 700,000 of them die each year.<sup>9</sup> However, there is still no acknowledgement of the positive public health role that vaping products could play. The early signs from the TPD evaluation are that the EU is unlikely to change course. The recently published SCHEER Preliminary Opinion on Electronic Cigarettes dismissed the existing evidence that e-cigarettes are primarily used as alternatives to smoking and failed to acknowledge the difference in comparative risk between e-cigarettes and combustible cigarettes. The EU's 'Beating Cancer Plan'<sup>10</sup> is further evidence of the regressive position the Union has adopted towards e-cigarettes and vape devices, despite the mounting evidence to the contrary. It seeks to introduce flavour bans on novel tobacco products and enforce mandatory plain/standardised packaging, both of which are policies that will only hinder smokers during their transition to less harmful alternatives, as will be argued throughout this document.

Outside of the EU, the UK Government will be able to respond to such developments with greater ease and less bureaucracy. The UK should seize the opportunity presented by leaving the EU to further cement the concept of tobacco harm reduction and ensure that its national tobacco control plans are based on the significant and growing body of UK science and research which shows that vaping is the most effective alternative for smokers looking to quit, and thus improving public health outcomes.



## A pragmatic approach

The UK Government has been a voice of reason when developing policy on vaping and is well-regarded by other countries for this approach. This pragmatic, science-led approach to the regulation of vaping products is welcome. The UK Government and public health organisations have created an environment which has allowed millions of smokers to significantly reduce harm to health by switching to e-cigarettes.

Indeed, PHE have supported vaping as a quitting tool consistently over the past six years. In their latest report published in February 2021, PHE continues to evidence the overall effectiveness of e-cigarettes in helping adult smokers to quit.<sup>11</sup> It concluded that nicotine vaping products were the most popular aid (27.2%) used by smokers trying to quit in England in 2020, compared with 18.2% using nicotine replacement therapy (NRT) products (such as patches and gum).

Professor John Newton, Director of Health Improvement at PHE, said:

**‘For anyone who smokes, particularly those who have already tried other methods, we strongly recommend they try vaping and stop smoking – ideally with additional support from their local stop smoking service for the very best chance of quitting for good.’<sup>12</sup>**

However, despite the supportive evidence from NHS and Public Health England, there is still a misperception amongst smokers that vaping is as or more harmful than smoking. Data from the ONS shows that the perception that vaping is less harmful than smoking fell from around 30% in 2017 to just 14.8% in 2019.<sup>13</sup>

It is important that evidence-based information is shared at every opportunity, providing adult smokers with accurate information about e-cigarettes. The Cochrane Review into e-cigarettes, published in October last year, supports other research that found that vaping is (70%) more effective in helping smokers quit cigarettes than nicotine replacement therapy.<sup>14</sup> In addition, the review found that:

**“There was no evidence that people using nicotine containing e-cigarettes reported more serious health problems than people using nicotine-free e-cigarettes, NRT or no therapy at all.”<sup>15</sup>**

In 2019, the Royal College of Physicians stated that ‘E-cigarettes are effective in helping people to stop smoking’.<sup>16</sup> The Royal College of Physicians has also argued that:

**“if [a risk averse and precautionary] approach also makes e-cigarettes less easily accessible, less palatable or acceptable, more expensive, less consumer friendly or pharmacologically less effective, or inhibits innovation and development of new and improved products, then it causes harm by perpetuating smoking.”<sup>17</sup>**



More generally, the UK Parliament's Science and Technology Select Committee's enquiry into e-cigarettes also noted that:

**“E-cigarettes present an opportunity to significantly accelerate already declining smoking rates, and thereby tackle one of the largest causes of death in the UK today.”<sup>18</sup>**

Much progress has already been made since e-cigarettes first entered the market. Studies and institutions across the world are helping to strengthen both knowledge and understanding of e-cigarettes and their effectiveness in providing a less harmful alternative to adult smokers looking to make the switch. The UKVIA believes that there is still much to be done to understand the support needed for consumers, manufacturers, retailers and healthcare professionals, and the TRPR provides that opportunity.

Yours sincerely,

**John Dunne**

**Director General**

UK Vaping Industry Association



UK Vaping Industry Association



## Positions summary

In response to the Government's consultation on the TRPR, the UKVIA proposes that significant changes are introduced so that:

1. Misinformation is tackled effectively – permitting agreed health claims and switching messages to encourage adult smokers to switch to e-cigarettes and utilising the different methods of communication available to the Government and public health bodies.
2. Product quality and safety standards are strengthened across the industry - including the introduction of zero-nicotine containing e-liquids within the TRPR.
3. Online vape retailers are supported with consumer outreach - ensuring that online vape retailers can communicate and offer services to adult smokers looking to make the switch.

**The proposals set out within this document are evidence-based reforms to the TRPR which, if included in the review, may establish proportionate regulations that support the benefit of vaping to public health. Many of the issues highlighted here are not new. Yet the opportunity to bring about meaningful and proportionate change, based on evidence, is now here. As an industry, we would be delighted to work with the Government to work towards these shared aims.**



### The country's leading vaping industry association

The UK Vaping Industry Association (UKVIA) is a non-profit organisation, run by its members for its members and is comprised of the UK's most entrepreneurial and fastest growing vaping businesses, across the e-cigarette supply chain. We have over 50 members and numerous strategic business and sector partnerships supporting the 3.2 million adult vapers in Great Britain alone.<sup>19</sup>

As the country's leading vaping industry body, the UKVIA supports evidence-based regulation that is proportionate and clearly sets apart e-cigarettes from combustible cigarettes.

We focus our efforts around five key strategic objectives:

- **Highlighting the public health potential of vaping.**
- **Driving a highly responsible vaping industry.**
- **Ensuring fair and proportionate legislation and regulation.**
- **Putting right the misinformation around vaping which deter smokers making the switch.**
- **Promoting the economic and social impact of vaping.**

The UKVIA is leading the way by developing a series of strategic partnerships and establishing core principles for both members and non-UKVIA members to adhere to. For example, as an age-gated industry, preventing underage access to e-cigarettes is a strict requirement under our Code of Conduct. It is incumbent on every vape retailer to ensure that they take age verification seriously both online and instore. Our position is clear: no one under the age of 18, should start using an e-cigarette or vape device. Data shows that e-cigarette use among young people in Great Britain is low. Of those aged between 16-18, just 2.5% used e-cigarettes more than once a week and only 6.5% less than weekly. Indeed, PHE's annual evidence review on e-cigarettes and novel products in 2020 found that vaping in young people was rare among never smokers.<sup>20</sup>

To help ensure that this number decreases further, the UKVIA has developed its Preventing Underage Sales Guide<sup>21</sup> in partnership with Trading Standards<sup>22</sup> and commissions a robust bi-annual test purchasing scheme, testing the age verification systems members have in place, all in the effort to support member compliance with minimum age laws.<sup>23</sup> Operating alongside the Association's Code of Conduct, these are just two examples of decisive action being taken by the UKVIA in setting clear standards for the industry to adopt to reduce underage access to e-cigarettes.

The UKVIA has also developed guidelines for packaging, labelling and flavour names.<sup>24</sup> These guidelines are aimed at reducing the youth appealing imagery and icons that are displayed on some e-liquids. The UKVIA believes that products for adult consumers should be packaged and marketed to adults.

## Top facts about vaping

- 1 | Perceptions of harm from vaping among smokers are increasingly incorrect and out of line with the evidence. 38% of current smokers believe that vaping is as harmful as smoking<sup>25</sup>
- 2 | E-cigarettes are almost twice as effective as nicotine replacement treatments at helping smokers to quit<sup>26</sup>
- 3 | Nearly two thirds of vapers (68%) said they never thought they would quit smoking until vaping came along<sup>27</sup>
- 4 | Within just one month of switching smoked tobacco for e-cigarettes, measures of blood vessel health, including blood pressure and stiffness of their arteries, had started to improve<sup>28</sup>
- 5 | The National Institute for Health Research found that vaping was twice as effective at helping smokers quit compared with a choice of combination nicotine replacement therapy<sup>29</sup>
- 6 | E-cigarettes helped an additional 50-70,000 smokers in England to quit in a single year<sup>30</sup>
- 7 | There have been no identified health risks of passive vaping to bystanders<sup>31</sup>
- 8 | Over 3million smokers have already used vaping to quit or reduce their smoking<sup>32</sup>
- 9 | Cigarettes cost around 3.5 times as much as e-cigarettes<sup>33</sup>
- 10 | There are over 2,000 vape shops in the UK offering specialist advice and products to vapers<sup>34</sup>





# Delivering Better Regulations: The UKVIA's Priorities

We believe that the following changes to the regulations would establish a much stronger environment to help adult smokers understand their options in switching to a less harmful alternative.



## Tackling Misinformation

### Agreed health claims to encourage smokers to switch where they would otherwise continue to smoke

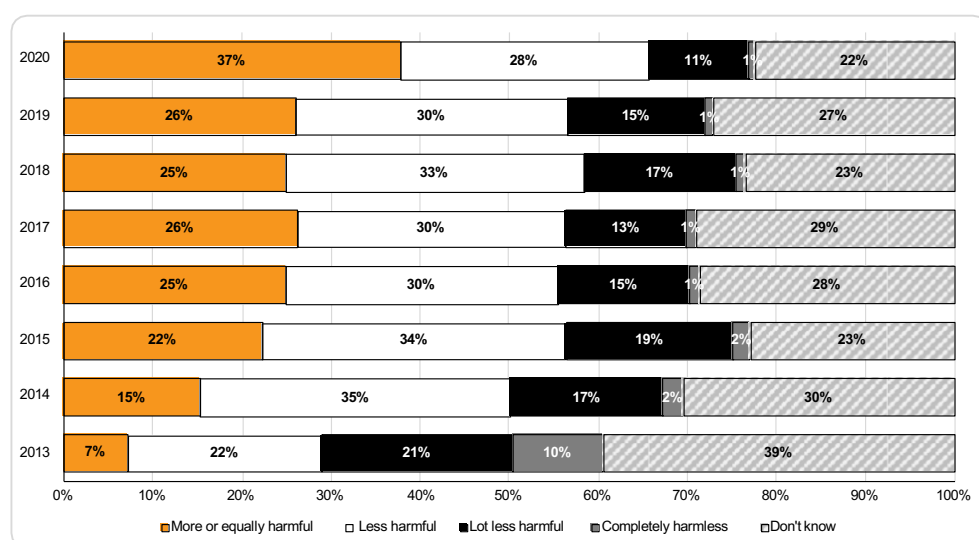
**Misinformation about vaping continues to deter smokers from switching to a less harmful alternative.** ASH data suggests that millions of smokers – more than half of the 6.9 million remaining smokers – could now be dissuaded from exploring switching to e-cigarettes because of incorrect views or confusion about the relative harms of e-cigarettes versus combustible cigarettes.

Research by ASH highlights that:

**‘Since 2013 there has been a significant increase in misperception of the relative risks of vaping compared to smoking among the adult population... The proportion of the adult population thinking that e-cigarettes are more or equally harmful as smoking is five times higher than in 2013, increasing from 7% in 2013 to 37% in 2020.’<sup>35</sup>**

The same report also highlights a stark comparison between the declining perception that e-cigarettes are less harmful than combustible cigarettes, compared to the belief that they are either more or equally harmful, which has increased significantly (see Figure 6 below).<sup>36</sup> The continuation of a decline such as this poses significant challenges in helping adult smokers understand their options to switch to a less harmful alternative.

**Figure 6: GB adults’ perceptions of harm from e-cigarettes, 2013 - 2020**



Unweighted base: All GB adults who have heard of e-cigarettes: 2013, n=8936; 2014, n=11,307; 2015 n=11,340; 2016 n=11,489; 2017 n=12,101; 2018, n=12,070; 2019, n=11,634; 2020, n=11,954).



The scale of this problem and the deteriorating trend we are seeing indicates that smoker misperceptions may perhaps pose a risk to the Government's goal of achieving a smoke-free country. Correcting these misperceptions should therefore be central to Government policymaking, and especially this review of the TRPR.

In their latest evidence review, PHE found that harm perception peaked in 2019 to 42.2%. Reflecting on this evidence, they state that:

**“A greater emphasis needs to be placed on how to best communicate evidence of relative harm to smokers so that they can consider all the options available to them to quit smoking.”<sup>37</sup>**

The UKVIA believes substantive action is needed to encourage more adult smokers to switch to vaping where they would otherwise continue to smoke. The current regulations mean that the e-cigarette category, and e-cigarette brands individually, are significantly constrained in their ability to help correct misperceptions. There are restrictions both in terms of the channels that are available for communicating with smokers, as well as the content of the communication.

A 2018 expert assessment for PHE concluded:

**“Vaping poses only a small fraction of the risks of smoking and switching completely from smoking to vaping conveys substantial health benefits over continued smoking. Based on current knowledge, stating that vaping is at least 95% less harmful than smoking remains a good way to communicate the large difference in relative risk unambiguously so that more smokers are encouraged to make the switch from smoking to vaping.”<sup>38</sup>**

The UKVIA believes that the Government must become even more active in driving largescale public health campaigns to tackle this critical category perception challenge. We also strongly believe that innovative structural reforms should be explored so that the correct information can reach smokers directly, in a range of different ways.



## The use of health claims and switching messages

A first step in challenging misinformation, should begin with Government, public health experts and industry agreeing a set of approved switching messages and health claims. These should be drawn from the best available evidence about relative risk, which all regulated e-cigarette and e-liquid brands would be able to communicate to their prospective customers.

The UKVIA would welcome the opportunity to work constructively with the relevant authorities in agreeing a list of pre-approved switching messages and health claims that vape retailers and manufacturers can then use in relation to device and e-liquid packaging, as well as advertising and promotions. These switching messages should be used in conjunction with nicotine addiction warnings.

Below is a series of example messaging from the Governments of New Zealand and Canada which have been considered.<sup>39</sup>

1. If you are a smoker, switching completely to vaping is a much less harmful option.
2. Switching completely from smoking to e-cigarettes will reduce harms to your health.
3. Completely replacing your cigarette with an e-cigarette will reduce harms to your health.
4. While vaping products emit toxic substances, the amount is significantly lower than in tobacco smoke.
5. By switching completely to vaping products, smokers are exposed to a small fraction of the 7,000 chemicals found in tobacco smoke.
6. Switching completely from combustible tobacco cigarettes to e-cigarettes significantly reduces users' exposure to numerous toxic and cancer-causing substances.
7. Completely replacing your cigarette with a vaping product will significantly reduce your exposure to numerous toxic and cancer-causing substances.

Once agreed, attention should turn to how these switching messages could be best used throughout the consumer and retail experience.

A summary of the various existing ideas for doing so are detailed below, including drawing on international evidence. The efficacy of each option should be compared to ascertain which methods are the most successful in communicating with adult smokers.



## On-pack messaging

In New Zealand, the Ministry of Health is currently consulting on reforms that would see authorised harm-reduction statements displayed within retail premises or on retailers' websites. The Ministry of Health states that 'the intention of these regulations is to give smokers accurate information to support their transition from smoking to vaping'. The UKVIA strongly agrees that accurate information, communicated effectively, can support smokers looking to make the switch to less harmful alternatives. The government may wish to go further by extending the permission to use these messages on packaging.

**If you are a smoker,  
switching completely to  
vaping is a much less  
harmful option**

**Switching completely  
from smoking to vaping  
will reduce harms to  
your health**

**Completely replacing  
your cigarette with a  
vape will reduce harms  
in your health**

There is evidence for this kind of reform: researchers at London South Bank University have found that existing nicotine health warnings displayed on e-cigarette packaging are deterring smokers switching from smoking to vaping: 'the TPD e-cigarette health warning may reduce smokers' willingness to use and likelihood of purchasing an e-cigarette.'<sup>40</sup> Packaging which carries a switching message as well as a nicotine warning label may strike the right balance between informing consumers about the relative harms of vaping versus continued use of combustible cigarettes.

## In-store messaging

Whilst the UKVIA has already raised the issue of risk communication with the introduction of health claims and switching messages, there are other opportunities which can help with the spread of these messages. Possible options include government-approved messaging on handouts/leaflets for retailers to supply to consumers, and posters that can be used in stores and online.

## In-pack messaging

The Government may wish to give further consideration to the role inserts inside packs of combustible tobacco products could play in encouraging smokers to switch from conventional cigarettes or highlighting the harm reduction benefits of vaping.<sup>41</sup> Currently the Standardised Packaging of Tobacco Products Regulations have restricted manufacturers from placing pack inserts into tobacco packs that could promote e-cigarettes.

Research into pack inserts is already underway,<sup>42</sup> however further research is needed to understand the efficacy of pack inserts in helping UK consumers understand the relative harm reduction of using e-cigarettes, and the role they could play in communicating risk reduction.

## Messaging from medical professionals

We would like to see medical professionals communicating the relative harm reduction benefits of vaping to adult smokers. An ASH survey of tobacco control leads found that only 11% of local authority stop smoking services offered vaping products to some or all people making a quit attempt.<sup>43</sup> The UKVIA agrees that ‘local authorities should continue to fund and provide stop smoking services and all stop smoking services should have a consistent approach to using vaping products.’<sup>44</sup>

More broadly, the medical curriculum needs greater support to improve understanding of the less harmful alternatives to smoking.

Cancer Research produced a cross-sectional survey of nurses and GPs across the UK in October 2019 and found that:

- Over 1 in 3 clinicians are unsure if e-cigarettes are safe enough to recommend as a quit tool to patients who smoke.
- 2 in 5 said that they would feel uncomfortable recommending e-cigarettes to their patients who smoke.
- 1 in 6 clinicians said they would never recommend using e-cigarettes to patients who smoke.
- Fewer than 3 in 10 clinicians agree that current knowledge is sufficient for advising patients about e-cigarettes. With 3 in 5 clinicians citing news, media and advertising as their source of information.<sup>45</sup>

A separate report published by ASH, has called for a national plan to implement training on smoking for mental health staff because of their patient base. Report authors stated that:

**“A lack of training during undergraduate and postgraduate education or within the workplace leaves staff ill equipped to implement smoking cessation strategies.”<sup>46</sup>**

51% of mental health nurses said they did not receive or could not recall training on the use of e-cigarettes, with 64% of mental health nurses saying the same for other smoking cessation medications. 76% of psychiatrists did not receive or could not recall training on the use of e-cigarettes.<sup>47</sup>

The UKVIA is calling on the Government to support the health service by firstly signposting clinicians to the latest clinical guidance on e-cigarettes. In addition, it is also hoped that both medical professionals and local stop smoking practices adopt a consistent approach to supporting patients attempting to quit smoking by recommending e-cigarettes as the most effective and least harmful alternative.



## Messages from government campaigns

In addition to the introduction of agreed health claims and switching messages, the UKVIA would like to see a more ambitious Government-led communications campaign explaining the potential harm reduction of switching from smoking to vaping. A trial should capture any evidence on the impact of advertisements in improving public perception and for those smokers considering the switch to vaping.

The Government's own impact assessment for the UK implementing legislation for the TPD highlighted this risk:

**'There may also be potential negative health implications if the restrictions on advertising reduce the number of consumers switching from tobacco products to e-cigarettes. Survey evidence suggests that most e-cigarette users are current or ex-smokers, with use by 'never smokers' negligible.'**<sup>148</sup>

A study in the US concluded that 'results indicate that a policy banning TV advertising of e-cigs would have reduced the number of smokers who quit in the recent past by approximately 3%.'<sup>149</sup>

Communicating risk reduction directly across several different mediums will ensure that no smoker is left out from seizing the opportunities presented by switching to less harmful alternatives.



## Widening the remit of the TRPR legislation to promote a responsible industry

The vaping industry has grown significantly and evolved over a short period of time, particularly since the existing regulations were first introduced. Innovation is at the heart of the sector and future regulations must allow for further such advances, whilst not compromising consumer safety. Therefore, the UKVIA is proposing that the TRPR is extended to include additional products and components. This will ensure that innovation is protected whilst at the same time **each addition to the regulations marks a decisive step forward in creating a more responsible industry.**

### Non-nicotine e-liquids

Particular attention should be paid to nicotine free e-liquids. Currently these products fall under the General Products Safety Regulations 2005, enforced by local trading standards, rather than the TRPR. As with the current regulations, all bottled e-liquids sold should be notified with the Medicines and Healthcare products Regulatory Authority (MHRA) and be subject to the same compliance, packaging, labelling, ingredient, and emissions testing requirements. This should also include non-nicotine containing e-liquids. PHE have also called for this legislative alignment.<sup>50</sup>

Public Health England, in March 2020, suggested that as ‘non-nicotine vaping products are less stringently regulated than nicotine-containing products, they may need to be reviewed alongside the forthcoming review [TRPR]’.<sup>51</sup> The UKVIA agrees with PHE that these products should be considered as part of the review.

Regulating all e-liquids in this way will ensure that manufacturers are deterred from adding unregulated ingredients into their e-liquids and that consumers are better protected if they choose to mix their own products (e.g. shortfill/shake n’vape). It will also raise consumer confidence that these products are of the highest possible standard. E-liquid bottles should always be child resistant and tamper evident, subject to ISO 8317:2015.<sup>52</sup>

The UKVIA is clear that should non-nicotine containing e-liquids be brought under the scope of the TRPR, these products should not be subject to the existing limitations in bottle size as those which do contain nicotine.





## Guidelines for packaging, labelling and flavour names

As the DHSC and PHE have consistently found, there is no evidence of widespread underage use of e-cigarettes in the UK. According to ASH, a large majority of 11-18 year olds have never tried or are unaware of e-cigarettes (83%).<sup>53</sup> However, there can be no room for complacency.

As the industry continues to grow, and as we seek to be able to communicate about relative risk with adult smokers, a sensible approach to regulating the branding and packaging of e-cigarettes and e-liquids is recommended. This will ensure that the appeal of products to underage users – and non-nicotine users – is minimised as far as possible. This can be achieved, for example, by appropriately regulating the branding and packaging of e-cigarette products to ensure that they do not inadvertently appeal to non-smokers or young people. This is an area where the TRPR is largely silent, and we believe further regulation is required.

Academics and tobacco harm reduction experts rightly highlight the critical role that flavours play in supporting those switching from smoking to vaping and preventing relapse. Adult smokers should have access to a full range of flavours to ensure that they do not turn to illegal products or relapse to smoking, as evidence suggests.<sup>54</sup> This is a conclusion which is supported by a vast body of scientific evidence.

The UKVIA has created a set of Packaging, Labelling and Flavour Names guidelines to set clear standards for e-liquid, flavour names and flavour descriptors on sale in the UK market. 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 – if 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. They provide a template that could be implemented into future regulations to limit youth-appealing branding, as well as egregious youth-appealing flavour names and descriptors.

It is hoped that the implementation of guidelines such as these will help reduce the potential attractiveness of vape products to never-smokers and persons under the age of 18.<sup>55</sup> The UKVIA takes its role in this effort seriously and continues to develop further guidance to reinforce our commitment to creating a responsible industry which is effective in supporting adults in their smoke-free journey.

### Allowing online vape retailers to communicate and offer services to adult smokers looking to switch

The responsible promotion of e-cigarettes can play a critical role in raising awareness of the attributes and availability of vaping products among existing adult vapers and those smokers looking to switch. **The additional barriers faced by online vape retailers must be removed to allow for effective communication of services to adult smokers.** We believe online retailers should be able to offer product promotions on their own websites, or via email correspondence with customers who have given their express consent to be contacted by the retailer.

Unlike other sectors, the vaping industry has been one of the few to defy the high street decline in recent years, with the total number of vape shops in the UK doubling from 1,000 to 2,000 in the last three years.<sup>56</sup> The declining high street has been as a result of a growing trend for retailers to move to digital marketplaces in line with consumer shopping habits.

A resilient vaping industry has been instrumental to adult smokers looking to make the switch, where quit rates involving a vaping product were higher than any other method in every region in England.<sup>57</sup> Nearly two thirds (68%) of vapers say that they never thought they would quit smoking until vaping came along<sup>58</sup> and in one year alone, PHE identified that over 50,000 smokers quit cigarettes with the help of vaping.<sup>59</sup> For this number to continue to increase however, the UK's vaping industry must be able to adapt to changing circumstances and changing consumer habits.


Effective communication across every platform will be important in supporting adult smokers as they transition away from conventional cigarettes. Online vape retailers must be able to not only highlight the latest evidence to adult smokers, but to also work with them in assessing their vaping needs to ensure a successful switching attempt. Allowing responsible retailers and manufacturers to promote their products and services as well as highlighting the health and cost benefits of making the switch to e-cigarettes, could be critical to the categories overall impact in reducing smoking prevalence.

For guidance on how to prevent and deter underage sales, the UKVIA has produced assured guidance in partnership with Trading Standards to ensure that vape retailers are compliant with age restriction regulations.<sup>60</sup>





# Further Considerations



The UKVIA is calling on the Government to continue to lead the world in its progressive approach to e-cigarette legislation and to consider some of the industry's unresolved issues, as set out below.

## Commissioning Research

### Effective nicotine delivery

Cigarette smoke contains thousands of distinct constituents, many of which are toxic or carcinogenic. It is these toxic by-products of combustion, not the nicotine, that are responsible for smoking-related death and disease. E-cigarettes do not burn tobacco leaves but use electronic heat sources to aerosolise a nicotine-containing liquid that is then inhaled by the user. This provides nicotine without burning tobacco, thus significantly reducing exposure to the harmful chemicals found in tobacco smoke.

Reduced toxicant exposure is the primary benefit of switching to an e-cigarette, but delivery of nicotine must be competitive with that of a combustible cigarette. This is an important factor in determining whether adult smokers are likely to continue to use an e-cigarette in place of their regular cigarettes – a critical component of tobacco harm reduction.

There are several factors that determine nicotine delivery to the user. These include the nicotine concentration of the e-liquid; the e-liquid formulation; the heating temperature; and the user behaviour (how many puffs; how deep, how often etc). The delivery of nicotine is therefore the result of the interplay of these factors and regulating nicotine delivery based on one factor alone may shift the dynamics of the other factors.

For e-cigarettes to compete with combustible cigarettes and provide a satisfactory alternative to those looking to switching, they must provide a comparably satisfying nicotine effect and experience. Regulating e-cigarettes to ensure they can deliver nicotine competitively with a combustible cigarette will involve achieving the right balance between these factors while minimising modifiable risks from e-cigarettes.

Evidence from ASH on the current satisfaction level of vaping compared to smoking suggests that 80% of former e-cigarette users who are current smokers found vaping to be less satisfying than cigarette smoking. Although at a lower rate (61%) those who currently use an e-cigarette in conjunction with combustible cigarettes, are also less satisfied.<sup>61</sup> The main reason given for discontinuing vaping was that e-cigarettes did not help users with their cravings due to insufficient nicotine delivery.

As nicotine is a key component to satisfaction, the UKVIA recommends a government review is commissioned to examine the role in which nicotine plays in allowing e-cigarettes to be a satisfying alternative to adult smokers wishing to make the switch away from smoking.



### **Bottle size limitations**

The UKVIA sees a significant opportunity for the industry to drastically reduce plastic waste and increase convenience for the consumer by allowing larger bottle sizes, without increasing the risk profile of e-liquids. This can be achieved by replacing the limit on bottle size (currently set at 10ml) in favour of a limit on total nicotine quantity per bottle, set at 200mg (equivalent to the current limit of 20mg/ml nicotine in a 10ml bottle).

To illustrate the point, the implementation of this change would allow an e-cigarette user currently vaping at a nicotine strength of 3mg/ml and restricted to buying 10ml bottles, to instead purchase a single 60ml bottle, rather than six 10ml bottles.

Following review, should the limit on nicotine concentration be increased, the maximum nicotine content limit should be increased proportionately. This may further maximise the benefits to consumers and the environment.

As previously stated, should non-nicotine containing e-liquids be brought under the scope of the TRPR, these products should not be subject to the existing limitations in bottle size as those which do contain nicotine.

### **Nicotine warnings**

Warnings for vape devices that do not contain nicotine but have the intention to be used with nicotine containing e-liquids, should accurately reflect the product on sale. In this instance, the UKVIA proposes that these products carry a revised nicotine warning label, in addition to an agreed switching message. The revised nicotine warning should read:

This product can be used with nicotine containing e-liquids. Nicotine is a highly addictive substance.





## Enforcement

### Trading Standards

The UKVIA is in a primary authority partnership with Buckinghamshire and Surrey Trading Standards. Part of our partnership agreement is having access to the latest information and advice produced by Trading Standards, particularly on the various ways in which the UKVIA can support raising standards across the wider industry. The UKVIA agrees with PHE that 'Enforcement of age of sale regulations for vaping (and smoking) needs to be improved.'<sup>62</sup>

Ahead of the review of the TRPR, the UKVIA has engaged with its Trading Standards partners, focusing on the issue of enforcement. Whilst the UKVIA is taking proactive steps to prevent underage sales within its membership and publishing guidance all vape retailers to follow, it was agreed that there is still much work to be done and that Trading Standards Officers need greater support in identifying non-compliance. In our discussion, Trading Standards identified three ways in which to raise standards and clamp down on rogue retailers. Their suggestions included:

1. Commissioning regional/national underage sales test purchasing schemes in partnership with vape trade associations.
2. Establishing an 'Approved Retailer Scheme' in partnership with vape trade associations.
3. Introducing a 'Licensing Scheme' for businesses operating within the vaping industry.

The UKVIA strongly believes that serious consideration is paid to both commissioning regional/national test purchasing and establishing an 'Approved Retailer Scheme', whereby retailers (both online and bricks and mortar) on the scheme would pay an annual fee to register as an approved retailer. Participation in the scheme would vouch for authenticity of the products that are being sold i.e., registered to the MHRA, fully compliant with Classification, Labelling & Packaging (CLP) regulations etc. Both would highlight non-compliant retailers, where genuine enforcement could lead to a universal raising of standards.

It is also proposed that an additional fee is charged during the MHRA product notification process which would go towards funding a special Trading Standards Unit dedicated specifically to enforcing compliance with vapour product regulations.



## Vaping in public places

### Distinguishing between vaping and smoking

Setting clear standards which differentiate smoking from vaping in public places, with an emphasis on the workplace. We note that the All-Party Parliamentary Group (APPG) for Vaping and other Parliamentarians support efforts for more vape-friendly policies in the workplace, different to policies adopted for smoking. It is hoped that the Houses of Parliament play a leading role in implementing a responsible approach to workplace vape policies. The UKVIA endorses and supports the five recommendations made in the APPG for Vaping's report on 'Vaping in workplaces and public places.'<sup>63</sup>

1. Employers should have a specific workplace vaping policy that balances the needs of current vapers or smokers looking to switch to vaping with those of non-vapers.
2. Public places should have specific vaping policies that are separate to smoking regulations.
3. The Parliamentary Estate must lead the way and act as an example to other workplaces and public places by becoming vape friendly. The current arrangements do not adequately cater to the needs of vapers; the designated vaping areas are outside and unknown to most members of staff.
4. Public Health England (PHE) should expand its vaping awareness programme to correct some of the public misconceptions around vaping and so-called 'passive vaping'.
5. Vapers should vape in a responsible way.

Research suggests there are no identified health risks with passive vaping<sup>64</sup> and, more often than not, vapers are required to vape in smoking areas making it incredibly hard for those making the transitions to stick with the switch, as it continues to expose vapers to the same pollutants they are moving away from. This is something the Science and Technology Select Committee also highlighted in their 2018 report.<sup>65</sup>

There is little evidence to continue to segregate e-cigarette users from non-smokers/non-vapers. It is both punitive and counterproductive to continue to treat vapers in this way and will undermine efforts already made when switching. Communication of the facts, particularly in how there is no identified risk of passive vaping to by-standers as well as smokers, is important in changing attitudes towards e-cigarette users.

## Appendix One – UKVIA TRPR positions in full

An overview of more detailed revisions to the Tobacco and Related Products Regulations is provided below:

### What's included

1. These are the products and components that should be included in the TRPR:
  - E-liquids that contain nicotine; non nicotine e-liquids (including shortfill/shake n vape); Concentrates marketed for use in inhalable nicotine products; E-cigarette kits (tank and battery, with or without e-liquid); Pre-filled cartridges that contain nicotine for e-cigarettes; Coils and atomisers
2. These are the components that should not be included in the TRPR:
  - Drip tips and Chargers
3. All inhalable nicotine e-liquids, including non-nicotine containing e-liquids, should be notified and subject to the same packaging, ingredients, emissions and toxicological testing requirements. Non-nicotine containing e-liquids should not be subject to the existing bottle size restrictions

### Packaging

1. E-cigarette tank capacity should be increased to no more than 5ml
2. E-liquids currently have a concentration of nicotine no more than 2% w/v (20 mg/ml)
  - a. The UKVIA recommends that a review/study is commissioned to examine the role in which nicotine plays in allowing e-cigarettes to be a satisfying alternative to adult smokers wishing to make the switch away from smoking
3. E-liquid bottles contain a maximum nicotine content of 200mg
4. Packaging should not resemble food items
5. E-liquid bottles must be child resistant and tamper evident (all bottles should be subject to ISO:8317 child protection)
6. Packaging of e-liquids and e-cigarette devices (prefilled or otherwise) should contain a message encouraging smokers to switch or highlighting the harm reduction benefits of vaping. Such claims would be agreed by the relevant public health bodies
7. Packaging of devices that do not include nicotine containing e-liquids, should carry a revised warning stating that: 'This product can be used for nicotine containing e-liquids. Nicotine is a highly addictive substance'



## Advertising

1. Manufacturers, retailers and brands of e-cigarettes and e-liquids which are TRPR compliant, are allowed to use the health claims and switching messages that have been agreed by the relevant public health bodies
2. Online vape retailers can communicate promotions and offer services to adult smokers looking to switch through their respective websites
3. E-cigarettes can be advertised on a company's own website or a website specific to vaping, or in consumer magazines and newspapers
4. To address category misperceptions, the UKVIA would welcome greater advertising freedoms for the private sector being considered in the future for all media channels. For now:
  - a. The UKVIA would like to see a more ambitious Government-led communications campaign explaining the harm reduction of switching from smoking to vaping. A trial should capture any evidence on the impact of advertisements in improving public perception and for those smokers considering the switch to vaping
  - b. Promotions can be communicated via email to consumers, so long as the retailer has lawfully received consent, taken necessary steps to ascertain age verification and is compliant with GDPR



Research studies should be commissioned by leading advertisement and public health authorities to better understand the value of a potential liberalisation of advertisements in reducing the number of smokers in the UK.

## Appendix Two – UKVIA Code of Conduct

**Full Members of the UKVIA agree to the following principles:**

- 1** | To be an advocate of the public health opportunity that vaping presents as a less harmful alternative to smoking.
- 2** | To never sell vaping products to anyone under 18 years old and apply a 'Challenge 25' policy in all retail environments.
- 3** | To ensure all retail staff are fully age aware trained.
- 4** | To ensure robust processes are in place and adherence to the UKVIA Minimum Standard for online sales to prevent sales to anyone under 18 years old.
- 5** | That products, product descriptions and advertising must not be directed at people under 18 years old or designed specifically to appeal to people under 18 years old.
- 6** | That vaping products should only be marketed towards smokers, vapers and consumers of other nicotine products.
- 7** | To comply with all legislative and regulatory requirements for the vaping industry.
- 8** | To adhere to fully compliant levels of product quality, manufacturing and safety standards in the industry and strive to improve best practice across the industry.
- 9** | To represent a responsible and professional image for the vaping industry so that regulators, government, public health authorities and consumers have confidence in vaping products.
- 10** | To work with regulatory bodies to stamp out counterfeit and dangerous products and report bad industry practice to the relevant authorities including to the MHRA Yellow Card system where relevant.



## **Appendix Three – UKVIA Packaging, Labelling and Flavour Names Guidance**

1. These guidelines apply to (as specified below) vaping related products, including:
  - a. E-liquid containers (including bottles, cartridges and any other primary container unit, for both nicotine-containing e-liquids and non-nicotine containing e-liquids) and associated unit packaging and labelling.
  - b. E-liquid flavours and flavour names and descriptors, across the full vaping e-liquid portfolio, including but not limited to individual Stock Keeping Unit (SKU) names, collection names and flavour descriptors.
2. All vaping e-liquid containers placed for sale on the UK market must comply with all relevant applicable laws and regulations. This includes health warnings; nicotine strength indicators; ingredients; instructions; and other manufacturer, importer, and compliance markings.
3. All vaping e-liquid container packaging and labelling placed for sale on the UK market must:
  - a. Not use brand or product names that seek to replicate, imitate, or associate themselves with well-known non-vaping brands or other products, that are particularly popular with persons under the age of 18.
  - b. Not display imagery on the product or packaging that closely mimics attributes which are appealing to persons under the age of 18, or related to youth culture, including cartoons and cartoon characters.
4. All vaping e-liquid flavours, flavour names and descriptors placed for sale on the UK market must:
  - a. Not use flavour names or descriptors that are misleading, linked to illegal or dangerous substances, sexually inappropriate or have unsubstantiated health claims.
  - b. Not use flavour names or descriptors that are particularly appealing to persons under the age of 18 and are associated with youth culture, including popular language or expressions, or names which are reminiscent of confectionary disproportionately appealing persons under the age of 18.
  - c. Adhere to the current applicable ASA guidelines on health claims.

## **Appendix Four – UKVIA Preventing Underage Sales Guide**

**UKVIA Preventing Underage Sales Guide – [Download](#)**

**UKVIA Combatting Underage Sales in the Vaping Industry Webinar – [Watch](#)**

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