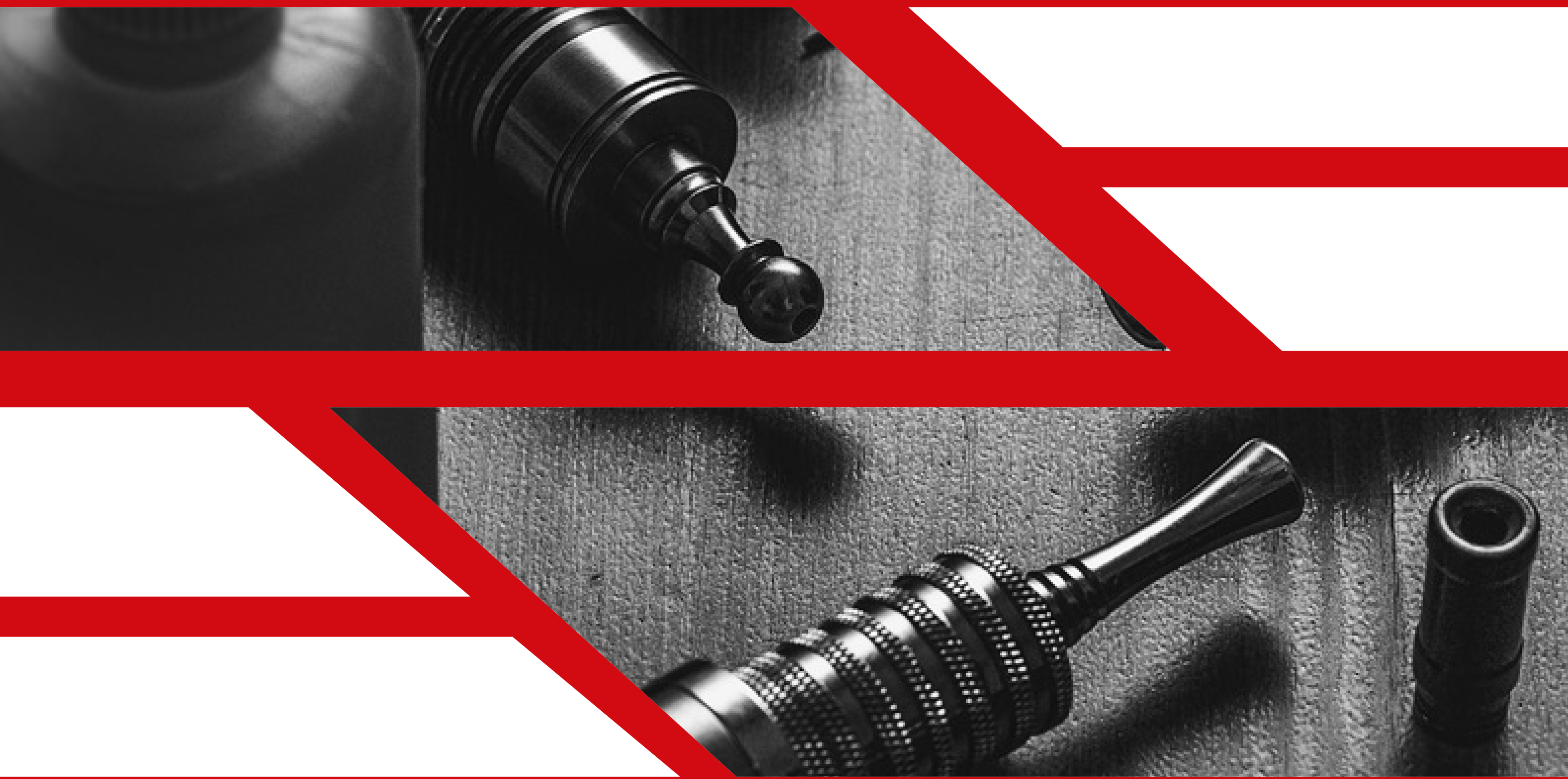
UKVIA

UK Vaping Industry Association



Accelerating the Prevention of Underage and Illicit Sales of Vapes in the UK

Foreword

John Dunne
Director General, UK Vaping Industry Association

The UK Vaping Industry Association (UKVIA) has established a special taskforce, comprising representatives from its 100+ strong membership base, to devise and propose solutions to meet the challenge of the rise in youth vaping and of non-compliant products that are tarnishing the hard-earnt reputation of the industry as the most successful, and considerably less harmful, alternative to cigarettes. While it is illegal for anyone to sell vaping products to those under 18 in the UK, the prevalence of youth access to vaping and illegal products, such as counterfeits, necessitates further and more robust action on behalf of policy makers, regulators and enforcement bodies, to police and act on this illicit trade and more effectively penalize those who transgress. These proposed solutions are essentially three-fold: a retail registration scheme; much more significant penalties for retailers selling to under 18s; and a national test purchasing scheme to police underage and illicit sales of all vaping products. We envisage these proposals to ultimately be incorporated into the Tobacco Control Plan.

John Dunne, Director General, UKVIA (UK Vaping Industry Association)

Introduction

As the UK's largest vaping industry body, the UKVIA comprises over 100 members and partners and represents the vast proportion of the UK vaping industry including manufacturers, retailers, wholesalers, distributors and compliance service providers. As a responsible organisation, the UKVIA understands that the Government needs to strike the right balance between supporting adult smokers to quit without encouraging take up amongst under-18s and 'never-smokers'.

In June 2022, the UKVIA wrote an open letter to Sajid Javid, who was then the Secretary of State for Health and Social Care, which was also copied to the Secretary of State for Levelling Up, Housing and Communities; the Minister of State for Brexit Opportunities and Efficiency; the Financial Secretary to the Treasury; the Parliamentary Under Secretary of State for Vaccines and Public Health; the Minister for Small Business, Consumers and Labour Markets; and Dr Javed Khan OBE.

The letter outlined the important role that vaping is playing, and can play in the future, in delivering a smokefree future for the UK. With vaping recognised as the most effective way for smokers to quit, it has the ability to not just save lives, but to save the NHS and the taxpayer, millions of pounds.

The letter also reiterated the point that the UKVIA has long called for a system of registration or an approved retailer and distributor scheme to filter out retailers who are not applying the law and ensure consumers (and lawful retailers) can be confident that the vape products they purchase adhere to strict safety and compliance standards.

Summary of recommendations

In summary the UKVIA's recommendations to the UK Government are as follows:

- Introduce a system of registration or an approved retailer and distributor scheme whereby all resellers - vape retailers (both online and in-store), wholesalers and distributors would adhere to strong age verification practices; they would also commit that products they sell are both notified with the MHRA and compliant with CLP classifications.
- Serve significantly increased penalties of up to £10,000 per instance for traders flouting UK law. Trading Standards Services should be given the power to issue a financial penalty, in effect imposing a financial penalty directly on a business without the need for court proceedings. Such a financial penalty should be variable according to the circumstances. Should two fines be issued, a retailer would lose its 'approved retailer' status.
- Commission a national test purchasing scheme to ensure all operations are performing to high standards when it comes to preventing underage and illicit product sales.
- Ensure Trading Standards is effectively resourced, such that it can recruit and train officers, dispose of illicit products, and ensure its actions are an effective deterrent to rogue actors across the supply chain. Such funding would be sourced from the proposed retail fines as well as potentially the retailer registration scheme. Adopt into legislation the UKVIA's packaging, labelling and flavour names guidelines to prevent branding that inadvertently appeals to non-smokers or under-18s. These guidelines reflect recommendations from the Khan Review.
- Introduce non-nicotine containing e-liquids to the Tobacco and Related Products Regulations 2016 (TRPR). Regulating all e-liquids in this way will further bear down on youth access and improve the quality of products offered for sale. 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, thus helping to reduce waste and minimise the impact of vaping products on the environment. The UKVIA would like to encourage The Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations 2015 to fall under the TRPR. Non-nicotine products need to be brought under the MHRA notification process and all e-cigarettes, whether they contain nicotine or not, ought to be subject to age restrictions.
- Ensure packaging is taken into account when registering new products on the MHRA product notification portal. This is to ensure e-cigarette packaging does not appeal to under-18s and adheres to the UKVIA's e-liquid (nicotine and non-nicotine containing) packaging, labelling and flavour name guidelines.

Since contacting the Government in 2022, the UKVIA has been developing and expanding on the proposals set out in the letter to the Secretary of State and there is still more work to do in engaging with critical stakeholders such as Trading Standards, the MHRA and Border Force. However, once this is complete, we believe it is critical for the Government to be fully engaged on these issues to ensure that as a society we continue to cut smoking, whilst also protecting children and the wellbeing of adult smokers when buying vape products. The task is essentially a straightforward one, that being to weed out rogue traders who sell vape products which are breaking the law. The UK vaping industry remains committed to this goal, along with schools, parents and government.

Retail Registration Scheme

Given the additional administration for local authorities for a national licensing scheme, we are proposing a retail registration scheme. The benefit of a registration scheme is that it gives a wider range of tools to Trading Standards to better enforce age restriction laws, whilst keeping the costs to the taxpayer to a minimum and with the least possible administrative burden on retailers.

In order to set up a UK-wide registration scheme for selling vaping products it is necessary for it to cover all resellers, including wholesalers, distributors and retailers (both online and bricks and mortar), to ensure regulatory compliance across the board. The Scottish model, in place since 2017 would be a good guide to follow, not just for consistency, but for the obvious benefit of being tried and tested. In Scotland, while the scheme is free to join, all retailers are mandated to register. Setting up a UK-wide scheme would be an opportunity to strengthen this model, incorporating qualifiers, such as:

- retailers demonstrating that they have robust age verification processes in place.
- wholesalers and distributors proving that they are stocking compliant products only.

As part of the registration process, participants would receive an information pack on best practice in the age verification process and spotting non-compliant products. A training programme would also be developed for staff to minimise the risk of falling foul of the regulations, as well as certain mandated conditions to support youth access prevention.

Registration would be for all retailers, wholesalers and distributors, regardless of whether a parent company was based outside of the UK and where there are multiple outlets, each location would be expected to register.

Legislation would give powers to trading standards officers to issue fixed penalty notices for selling products to under 18s, or selling counterfeit or non-compliant products. Whether or not to rescind a retailer's registration would be based on the frequency of breaching the legislation during a designated period of time; for example in the Scottish model, this would be three transgressions within a two year period, with a potential ban on selling vaping products of up to 12 months.

In order to ensure a sustainable and effective scheme, any money raised through penalty fines and/or registration fees, should be ring-fenced specifically to finance the cost to Trading Standards of administering and enforcing the scheme.

The enforcement of registration legislation relies upon a robust national test purchasing scheme and suitably robust levels of penalty fines and these are both covered on the next page.

Financial Penalties for Underage/Illicit Vape Sales

The current maximum penalty that can be imposed by the Courts for selling vape products to under 18s is £2,500. This would be after a lengthy court procedure and many cases would not reach this point.

We propose giving the Trading Standards Service the power is issue a financial penalty without the need for court proceedings. In addition we would propose a much higher maximum penalty, up to £10,000. This penalty would be coupled with the possibility of a retailer having their registration rescinded, in effect meaning they are no longer permitted to sell any vape products. Variation in the level of penalty would be at the discretion of Trading Standards, taking into consideration the particular circumstances of the breach and the relative size of the retailer in question; albeit adopting a robust approach as a default. Where a store might be part of a wider group, the penalty would target the individual store. We would anticipate an appeal procedure being built into the process so that the retailer would be able to challenge the level of financial penalty.

Where a sales assistant is guilty of not effectively preventing sales of vape products to underage people, they could personally incur a financial penalty, as well as both the company and the individual director(s) or owner of the business.

The process by which warnings and/or the level of financial penalty are decided upon and communicated will need to be clearly defined, but can be based on comparable processes that are deemed effective; this would also be the case for a penalty review process. A guidance for the financial penalty framework for Trading Standards officers would be developed, including possible mitigating factors, such as evidence of an up to date 'refusals log' as well as staff training and other appropriate measures. As with other financial penalties, for example parking fines, early payment might incur a discount and, in this way, reduce the cost of administration and speed up the process.

There should be a separate penalty framework for the different offences of under-age selling and sales of non-compliant or counterfeit products. Retailers need to be taking responsibility for the products they are selling and ensure they are selling compliant products. There is plenty of guidance available explaining how to check products to ensure they are permitted to be sold. Financial penalties would be set according to the particular circumstances of the offence and in line with the guidelines, and the enforcement policy of the Authority issuing the financial penalties.

As with the Retail Registration scheme there would also need to be an extensive education and engagement programme around the penalty levels and criteria amongst key stakeholders including retail personnel, regulators and enforcement organisations.

National Test Purchasing Scheme

Once a business is registered, they would be subject to the National Test Purchasing Scheme (NTPS). As with other elements of the proposals to strengthen youth access prevention to vaping products, the intention would be for the NTPS to be essentially self-financing through a fee, as part of the registration scheme.

It is acknowledged that Trading Standards is not currently set up to conduct such a scheme and would need to set up an 'Age verification team' with a national capability and remit. This reinforces the need to ring-fence revenue gained through financial penalties and/or registration fees to ensure the scheme is sustainable. Such models already exist, including the out-sourced method, whereby litter financial penalties or parking financial penalties are collected by third parties who are financed through a proportion of the penalty fines they are empowered to enforce.

When a retailer, wholesaler or distributor registers, they automatically agree to be part of the NTPS and are made fully aware of the importance of training and robust age verification, as well as the potential penalties for non-compliance. The education of those registered parties is of course very important, not just to ensure compliance, but to ensure they are fully enabled to prevent youth access. Furthermore, any transgressions must be properly policed and penalised to ensure that it remains a fully effective deterrent.

Beyond the NTPS, there is also a requirement to improve the process for a third party to report illegal activity. Currently such a process is not simple or well signposted and it is recommended that there be a single central process to report such activity.

While these proposals are specifically designed to combat youth access to vaping products, it is also recognised that a test purchasing scheme could potentially be used for other age-restricted products, such as cigarettes and alcohol, as well as to identify non-compliant vape products, although the added complexity might outweigh the benefits of saving on resources.

The suggested frequency of testing would be once every six months, with a potential to increase the frequency for online retailers due to the relative high volume of sales activity.

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