

## **Creating a Smoke Free Generation and Tackling Youth Vaping: Consultation Document**

ASH Wales is the only public health charity in Wales whose work is exclusively dedicated to tackling the harm that tobacco causes to communities. Further information about our work can be found at [www.ashwales.org.uk](http://www.ashwales.org.uk)

**ASH Wales has no direct or indirect links with, and is not funded by, the tobacco industry**

### **Creating a smokefree generation:**

- 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?**

#### **ASH Wales response: Agree**

We welcome the proposal. Tobacco is a uniquely lethal product which kills up to 2 in 3 long term users when used as intended.

Smoking costs the Welsh NHS more than £300m a year and places a significant burden on social care and the wider economy through early disease and death. Smoking is a key driver of health inequalities and causes 16 types of cancer, heart disease, COPD, strokes and a myriad of other health harms.

Smoking is an addiction most start as teenagers rather than an adult choice, with 77% in Wales saying they tried their first cigarette in childhood (ASH YouGov2022). Among those who try smoking 70% will go on to be daily smokers. [ASH Wales 2022 Annual YouGov Survey](#)

Raising the age of sale is likely to both delay smoking uptake and reduce the number of young people who start smoking in the first place. After bold policy

moves in the 2000s, when the age of sale was raised from 16 to 18, and smoking in enclosed public places was banned, smoking rates declined.

There is already significant levels of public support for this measure. Polling in Wales in November 2023 showed 62% of adults in Wales support these measures to raise the age of sale (ASH Wales / YouGov), with 59% supporting a goal to make Wales a country where no-one smokes. [ASH Wales November 2023 Wales poll](#)

A comprehensive communication strategy in the run up to implementation as was carried out for the smoking ban to ensure public awareness is essential to promote compliance and make enforcement easier for retailers. Mandatory age verification for tobacco sales would also aid enforcement.

## **2. Do you think that proxy sales should also be prohibited?**

### **ASH Wales response: Agree**

Yes, it will be important for proxy sales laws to be in line with age of sale laws to ensure consistency. We strongly advocate that the UK Government and all devolved governments work together with a unified approach on this, to ensure cross-border consistency and to avoid consumer confusion.

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

### **ASH Wales response: Agree**

We believe that all tobacco containing products, including heated tobacco and snus, as well as cigarette papers should be covered by the new legislation, mirroring current age of sale laws. The tobacco industry has been shown to find ways to subvert laws which are not comprehensive and future-proof. If all tobacco products are not included it will make enforcement more challenging and create opportunities for the industry to find loopholes.

## **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?**

### **ASH Wales response: Agree**

It would make sense for the warning notices in retail premises to be changed to reflect the new legislation and the proposal is simple and easily understood. However, we would recommend this is discussed with Trading Standards colleagues who will be responsible for enforcing the legislation as well as with retail groups that are not affiliated to tobacco manufacturers.

We welcome the commitment from UK Government to increase funding for tobacco enforcement, recognising how crucial our regulatory partners are in the journey towards creating a smokefree generation. However, to reflect the regulatory enforcement framework, any funding allocation to support enforcement should include a devolved distribution mechanism to ensure all nations receive funding to support implementation of regulations. The recent joint working of HMRC and trading standards under Operation CeCe is an excellent example of national funding supporting local enforcement.

## **Tackling the rise in youth vaping:**

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

#### **ASH Wales response: Agree**

We support restricting how flavours are described, but do not think that there is sufficient evidence to restrict the number of vape flavours currently on the market. It remains unclear how important they are to the increase in teen vaping though they clearly have a function in ensuring vapes are appealing and utilised by adult smokers. Vaping rates were low among teenagers for many years when the range of available vaping flavours rapidly increased. Teen vaping increased significantly following the growth in popularity of so-called disposable vapes, which should instead be called 'single use' as disposable can be taken to mean they can be thrown away rather than recycled.

Flavours, their role and potential harms urgently require further research in order to establish the most appropriate policy response.

It will be important strike the right balance between reducing appeal to children while also preserving the appeal of vapes to adults who want to quit. A disproportionate approach could lead to unintended consequences with [research from the United States](#) showing that, rather than nudging people away from vapes,

such measures to restrict vape flavours drive users to instead buy conventional cigarettes and that instead of reducing nicotine-related harms, they may instead be magnifying them.

**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?**

**ASH Wales response: Limiting how the vape is described**

We strongly advocate that the UK Government and all devolved governments work together with a unified approach on this, to ensure cross-border consistency and limit consumer confusion.

There is strong public support for this in Wales. In the ASH Wales / YouGov survey 2023, 76% of all adults in Wales support a ban on the names of sweets, cartoons and bright colours on e-cigarettes. [ASH Wales 2023 Annual YouGov Survey](#)

As a minimum and as a priority, we recommend governments urgently explore options to limit the ways in which flavours are described, in order to limit their appeal to children. This could include regulating how vape products are named, described and portrayed, and limiting descriptors shown to appeal to children.

Limiting how the vape is described, while not removing flavours from the market, would enable a range of flavours to be made available to support adults in their quit attempt while reducing the appeal to children.

An acceptable example of improved restrictions would be a vape described as 'blueberry flavour' rather than 'berry blast.'

This would also create time to conduct further research into whether flavours should be further restricted in ways that reduce their appeal to children without diverting adults away from vaping and back to smoking.

**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?**

**ASH Wales response: Flavours limited to tobacco, mint, menthol and fruits only**

Given that more research is essential before any decisions on restricting the number of vape flavours, we do not currently recommend any of the above options.

Instead, as a priority, we are calling for urgent restrictions on how vape flavours are described.

However, if Government were to proceed with flavour restrictions then it should ensure that fruit flavours remain available.

Among current adult vapers, ASH Wales/ YouGov research in 2023 finds that in Wales, 45% are mostly using fruit flavours. Only 16% of current vapers in Wales say they most often use tobacco flavour.

[ASH Wales 2023 Annual YouGov Survey](#)

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

**ASH Wales response: Yes**

As outlined above flavour descriptors should be limited through regulations.

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

**ASH Wales response: Yes**

Yes, bearing in mind our answers to Q5 and Q6 above, that restrictions should be placed on the ways in which vapes are described, rather than on the flavours themselves.

If rules are in place to restrict how flavours are described, this should be in place for all vaping products, to avoid risk of companies finding loopholes in the law to continue to promote products inappropriately.

From an enforcement perspective 0% nicotine products should be included in all regulations for vape products, as there are concerns among trading standards colleagues that currently undermine enforcement.

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

## **ASH Wales response: Vapes must be kept behind the counter, but can be on display**

Consideration should be given to the unintended consequences of a display ban, which could disproportionately penalise legitimate retailers selling smoking cessation tools to adults.

To address this, we believe vapes should only be kept behind the counter but remain on limited display with no other instore or externally visible promotion and providing that regulations have been implemented to remove child-friendly packaging and labelling.

Research by ASH Wales / YouGov 2023, shows 75% of adults in Wales support a ban on advertising and promotion of e-cigarettes at point of sale.

### [ASH Wales 2023 Annual YouGov Survey](#)

This approach reflects the different levels of risk between tobacco products and vape products: if vape products are subject to all of the same regulations as tobacco, then this could add to the existing misperceptions among the public that vapes are equally as, or more, harmful than tobacco.

Adults in Wales who believe that e-cigarettes are just as harmful, or more harmful than tobacco cigarettes is **46%** in 2023. This includes **47%** of smokers. (ASH Wales / YouGov 2023)

However, if this measure is not sufficient, there should be powers in the primary legislation to allow the regulations to be strengthened to ensure vape products are behind the counter and out of sight. Although it has been noted by Community Pharmacy Wales that members would no longer stock and sell e-cigarettes if they became an “out of sight” product.

It is also worth noting that placing vapes behind the counter, and the customer needing to ask to purchase one, provides the retailer with an additional opportunity to assess the customer’s age supporting enforcement efforts.

While it would not be desirable for vapes to be less available than tobacco, having fewer retailers selling products will also aid enforcement. Another consideration for enforcement is the relative ease of assessing legitimate products when they are on display.

## **11. Do you think exemptions should be made for specialist vape shops?**

## **ASH Wales response: Yes**

Interim results from responses to an ASH Wales schools survey this term show that just 6% of under 16s say they get their e-cigarettes from a vape shop.

Almost a third (30%) say they get their vapes from someone they know.

However, we believe that there should still be some regulations around vape displays in specialist vape shops, particularly those in shop fronts that are visible from the street and also restrictions should be considered around any on street marketing boards etc.

It may be appropriate to consider further age restrictions on specialists shops to ensure they are primarily accessed by adults.

### **12. 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?**

#### **ASH Wales response: 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**

We strongly advocate that the UK Government and all devolved governments work together with a unified approach on this, to ensure cross-border consistency and limit consumer confusion.

We recognise that there is compelling evidence in favour of introducing restrictions on how vapes are packaged and we are confident that such restrictions can reduce the appeal to children, while still appealing to adults who want to quit smoking. Some of the current imagery and branding is highly inappropriate and deemed to be too child appealing.

There's strong public support in Wales for this, with 76% of adults in Wales support banning names of sweets, cartoons, and bright colours on e-cigarette packaging, according to the ASH Wales / You Gov 2023 survey. [ASH Wales 2023 Annual YouGov Survey](#)

[Research from King's College London and ASH GB](#) looked at how packaging affects the appeal of vaping to teenagers and adults.

It found that those in the teenage group were more likely to report that their peers would have no interest in vapes when marketed in standardised packaging.

This is in contrast to the adult group, whose interest in using vapes was not reduced by the standardisation of packaging.

We recommend that governments commit in the first instance to restricting brand imagery – and to consider prescribing the size and type face of any branding which does remain, as per tobacco packaging regulations – and then to undertake more detailed research to inform the development of effective regulations.

We have some hesitancy to go down a fully standardised plain packaging route until more research is undertaken with smokers around perceptions of harms of vaping versus smoking.

**13. If you disagree with regulating vape packaging, what alternative measures do you think the UK Government and devolved administrations should consider?**

**ASH Wales response: Not applicable** – we agree that there needs to be improvements in the way that vape packaging is regulated.

**14. 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?**

**ASH Wales response: Agree**

It would be desirable from an environmental and teen vaping perspective to reduce the use of 'disposable' vapes.

We think that restricting the promotion and marketing of all vapes (as set out above) will reduce the demand for disposable vapes but that further action will also be needed.

We call for an excise tax on vape products that would be zero rated for refillable/rechargeable devices but set at such a level for disposable vapes to increase their price by at least £5 per unit.

This should make products less affordable for teenagers and incentivise adults to use more sustainable (and ultimately cost saving) refillable products.



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

**ASH Wales response: Disagree**

A ban on disposable vapes may have unintended consequences. These are set out in detail in a joint paper from ASH GB, Chartered Trading Standards Institute and Material Focus can be found [here](#).

Interim results from the Autumn 2023 ASH Wales survey of more than 10,000 children aged 11-16, show that of those who say they are current vapers, 45% say they use vapes containing over 600 puffs, thus demonstrating a significant issue with illicit products.

A ban would be unlikely to significantly reduce the supply of illegal products to underage vapers.

When the ASH Wales school survey asked current vapers what they'd do if disposable vapes were banned:

- 16% said they would start smoking
- 24% said they would start using refillables
- 26% said they would find someone who sells them
- only 24% said they would stop vaping

The illicit market must be brought under control before a ban might be effective.

There is also a danger that a ban would add to current misconceptions around the relative harms of vaping among adults trying to quit, with disposables banned but cigarettes remaining freely available.

Any ban would limit the use of products with vulnerable groups of smokers such as those in mental health and custodial settings and individuals with dexterity issues such as older smokers. In the context of supply, we believe the loophole that allows vapes to be given to under 18s should be closed. And that the loophole that allows vapes that don't contain nicotine to under 18s should also be closed.

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

**ASH Wales response:** Once the priority regulations are in place around promotion, marketing and the introduction of an excise tax to increase the price of single use products, governments may wish to consider regulating the shape and form of such devices and seek to standardise these. This could be beneficial from both an environmental and enforcement point of view, with the likely result that devices would not take the shape and form of toys or gadgets that may be appealing to children. Careful consideration would need to be given to any policy development in this area, to ensure that it doesn't result in unintended consequences.

**17. 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?**

**ASH Wales response: Disagree**

The loophole which enables free distribution of any vape to anyone of any age needs to be closed urgently and we have been calling for this for quite some time.

**18. 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?**

**ASH Wales response:** As with many single use products, we note there are concerns about the environmental aspect of single use vapes that need to be addressed urgently.

Vape companies are currently not complying with their environmental obligations, and we support the recommendations of Material Focus who are calling for a revision of regulations.

The full environmental costs of collecting and recycling vapes – including raising public awareness – should be met by industry and not by public finances.

We also need action to address the negative impact on the environment caused by discarded tobacco products and in particular cigarette butts which are the most littered item worldwide and which can't be recycled, do not biodegrade and which leach toxic chemicals into the environment. The vast majority of respondents to the ASH Wales / YouGov 2023 poll (85%) support the banning of cigarette butts that contain plastic to protect the environment.

[ASH Wales 2023 Annual YouGov Survey](#)

It has been estimated that a tobacco levy could raise up to £700M per annum. If a tobacco levy were realised, ASH Wales highlights that funds would need to be distributed to devolved nations fairly and ringfenced for actions to support prevention and reduction in tobacco use.

ASH UK estimates that around £266M per annum is required to fund a comprehensive tobacco control programme in England, with an additional £49 million on a per capita basis for the other nations in the UK.

It has been proposed that the extra £385M generated from such a scheme could be put towards additional UK public health programmes and services.

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

**ASH Wales response: Yes**

Professor Linda Bauld, University of Edinburgh explained that while nicotine isn't the harmful product in vapes, it is addictive - so users are exposing themselves to other carcinogens and toxicants in vapes which are there – at a much lower level than in smoking, but not zero.

In addition, ASH GB monitor the use of non-nicotine vapes and, among young people in 2023, their [survey](#) showed the following: 51% of 11-17 year olds who currently vape said that the e-cigarette they used most often always contained nicotine; 30% said it sometimes contained nicotine; 9.5% that it never contained nicotine; with 10% saying they didn't know.

According to the ASH GB / YouGov survey around 10% of current vapers report using zero-nicotine products and they are twice as likely to be ex-smokers than smokers.

ASH Wales has recently (Autum term 2023) questioned secondary schoolchildren in Wales on their use of e-cigarettes.

Interim results show the number of daily vapers in Year 11 is estimated to be around 10% with prevalence significantly higher amongst females than males.

In earlier SHRN surveys, most youth vapers indicated that their vapes did not contain nicotine, and hence the proportion of young people whose vapes contain nicotine might be growing.

Interim results from Years 7-11, show that more than 85% of those that vape on a regular basis use a vape that contains nicotine.

Further restrictions on non-nicotine vapes are needed to ensure they are neither accessed by teens, nor exploited by industry to avoid regulations. However, they also have a function in supporting adults and should be kept on the market in line with regulations for nicotine products.

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

**ASH Wales response: Yes**

We believe that non-nicotine vapes should be regulated in the same way as nicotine containing vapes. This will prevent industry from using them to promote vaping in ways that they aren't allowed to communicate with nicotine-containing vapes.

**21. 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?**

**ASH Wales response: Yes**

Overall in 2023 adult use of nicotine pouches remained low in Wales, despite heavy marketing by industry. However, there are currently limited marketing restrictions and product requirements. and no age of sale. Their use among those under 18 would be undesirable, but they may have a value for adult smokers looking to switch and should be regulated in a similar way to vaping products. The Government should not wait until a market has been established in those under 18.

**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?**

**ASH Wales response: Yes**

We strongly advocate that the UK Government and all devolved governments work together with a unified approach on this, to ensure cross-border consistency and avoid consumer confusion. We need regulations that cover all nicotine products.

The Tobacco and Related Product Regulations only cover e-cigarettes and novel tobacco products, not novel nicotine products like pouches. That means that for novel nicotine products there are:

- No age of sale regulations so they can be sold to anyone, as well as being handed out free.
- No standardised regulatory requirement for information on packaging to provide information to consumers
- No controls on their advertising, promotion and sponsorship – these products are being promoted online via influencers, free samples and competitions
- No limits on nicotine content – some of them are very high strength, much higher than allowed by the regulations for e-cigarettes.
- No regulation of contents or ingredients – other than that required for them to conform to general product safety rules

The regulations need to be revised to include not just nicotine pouches but any novel nicotine products, as this is a market which is likely to continue to evolve.

We also believe that more independent research is needed to determine what, if any, role such products can play in tobacco control and for broader public health.

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

#### **ASH Wales response: Yes**

Young people are particularly price sensitive and increasing the price of single use vapes through taxation would reduce the number of young people vaping. This should be implemented in the form of an excise tax for vaping products which is zero-rated for refillable/rechargeable – to maintain their affordability in comparison to tobacco – and, for single use products, set at a level which increases their price by at least £5.

As well as deterring youth vaping, this should also help nudge adult smokers looking to switch towards re-usable products which will be less damaging to the environment.

An excise tax would also give greater powers to enforcement officers to take action against non-compliant products.

However, it is important that vaping remain more affordable for adults than smoking. Any tax needs to be calibrated to ensure that tobacco remains the most expensive product.

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Any tax needs to be calibrated to ensure that tobacco remains the most expensive product.

**Enforcement:**

**25. Do you think that fixed penalty notices should be issued for breaches of age of sale legislation for tobacco products and vapes?**

**ASH Wales response: Yes**

In principle, we welcome the proposal to increase the enforcement options available to Trading Standards to take action against those who breach age of sale regulations, particularly in light of the challenges of taking forward prosecutions.

We would also welcome broader consideration of the tools and penalties available for breaches of other tobacco and vape regulations. However, consideration needs to be given to where ultimate responsibility for compliance with the legislation lies.

Who would Fixed Penalty Notices be issued to, the business owner or the seller?

We raise this to flag potential unintended consequences of disproportionately penalising staff who may be low paid and may not have been trained / advised of the legislation.

**26. What level of fixed penalty notice should be given for an underage tobacco sale?**

**ASH Wales response: Other**

This needs to be thought through carefully, in consultation with Trading Standards, to determine the most appropriate level and an appropriate sliding scale for persistent offenders.

The level of penalty depends on who in the retail chain is being issued with the Fixed Penalty Notice.

**27. What level of fixed penalty notice should be given for an underage vape sale?**

**ASH Wales response: Other**

This needs to be thought through carefully, in consultation with Trading Standards, to determine the most appropriate level and an appropriate sliding scale for persistent offenders.

Again, the level of penalty depends on who in the retail chain is being issued with the Fixed Penalty Notice.