

The Environmental Protection (Single-use Vapes) (England) Regulations 2024.

Response to be sent to disposablevapes@defra.gov.uk by 25 March 2024.

This response is being sent on behalf of The Chartered Trading Standards Institute and has been compiled by the expertise of CTSI members.

ABOUT CTSI

Founded in 1881 (as the 'Incorporated Society of Inspectors of Weights and Measures'), today's Chartered Trading Standards Institute (CTSI) is one of the world's longest-established organisations dedicated to the field of Trading Standards and Consumer Protection. And, after more than 140 years of progress, we remain immensely proud of our close association with the Trading Standards profession and the vital work it continues to do – promoting fair business practices, tackling rogue traders and, ultimately, protecting UK consumers.

At CTSI and through the trading standards profession we aim to promote good trading practices and to protect consumers. We strive to foster a strong vibrant economy by safeguarding the health, safety and wellbeing of citizens through empowering consumers, encouraging honest business, and targeting rogue practices.

We provide information, guidance and evidence-based policy advice to support local and national stakeholders including central and devolved governments. CTSI is responsible for business advice and education in the area of trading standards and consumer protection legislation, including running the Business Companion service to provide clear guidance to businesses on how to meet their legal and regulatory obligations. CTSI is also responsible for the Consumer Codes Approval Scheme which facilitates high principles of assisted self-regulation through strict codes of trading practice. This ensures consumers can have confidence when they buy from members of an approved scheme and also raises the standards of trading of all businesses that operate under the relevant sector's approved code.

We run training and development events for both the trading standards profession and a growing number of external organisations. We also provide accredited courses on regulations and enforcement

CONSULTATION RESPONSE

The Chartered Trading Standards Institute (CTSI) is pleased to comment on the draft regulations which have been published by the Department for Environment, Food and Rural Affairs (Defra) which propose to ban the sale and supply of single-use disposable vapes in England to prevent pollution to the environment. The Association of Chief Trading Standards Officers (ACTSO) have input and support this response. Neither CTSI nor ACTSO have any direct or indirect links to, or receive funding from, the tobacco industry.

We believe the ban on sale and supply could help to reduce the impact of discarded single-use vapes on the environment and we welcome the addition of regulatory tools such as “stop” notices and penalty notices to our toolkits. However, we would also highlight the fact that there is already a substantial illegal market for disposable nicotine containing vapes which we estimated to be approximately one-third of the total consumption - [CTSI statement on vapes \(tradingstandards.uk\)](https://www.tradingstandards.uk).

There is nothing to suggest that producers, distributors and retailers of illegal products will stop selling disposable single-use vapes in the future if consumers want them. We have continued to stress that we need more resources and powers to deal with the problem of these illegal products, particularly at ports and borders when enforcement work can have the most impact. Nothing in the new regulations will change that.

We welcome the commitment of Defra in the Explanatory Memorandum to consider an import ban for single-use vapes in the future. We believe the ability of our colleagues in Border Force to prevent entry into the United Kingdom of single-use disposable vapes of any type would bring benefits in tackling illegal vapes generally.

Moreover, there is a substantial part of the disposable vape market which consists of compliant products sold by legitimate retailers. These responsible businesses will no longer sell disposable single-use vapes when the new regulations come into force from April 2025 and therefore consumers will either be able to select a different product – one that is compliant with the new regulations – OR not buy a vaping product at all OR seek an illegitimate source.

We believe that the majority of consumers will select a different product which is compliant with the new regulations. We are already seeing innovation from manufacturers such as the Elfa product [ELFBAR ELFA PRO Pod Kit - Rechargeable From Elfbar.co.uk](https://www.elfbar.co.uk) and the Lost Mary Tappo product [Lost Mary Tappo Rechargeable Pod System](https://www.lostmarty.com) which comply with the new regulations as well as current regulations. Such products can be recharged and re-filled many times and could therefore be far less detrimental to the environment than current single-use disposable vapes. However, we have some concerns:

1. The price point for such products is very similar to that for current single-use disposable vapes and we are concerned that consumers may simply treat them as single-use disposables rather than re-charging and re-filling. It may well be that the current pricing policy is one of loss-leadership to gain market share and customer loyalty in the short term, with the intention of increasing the price when the new regulations come into force. However, to reduce the risk of such products simply being used once, and/or the impact on the environment we would recommend Defra consider the other proposals we made in our response to the “Creating a Smokefree Generation” consultation i.e.
 - *The development of more effective and accessible recycling schemes for vapes. These should include reinforcement of in-store take back schemes as well as recycling points in public spaces such as parks and bars.*
 - *Registration with environment agencies via producer compliance schemes made a prior to market mandatory component of the MHRA e-cigarette notification scheme.*
 - *Creation of a separate category for vapes within WEEE regulations to ensure that producers, importers and retailers are required to fully finance takeback (we recognise this is already being developed by Defra under changes proposed to the WEEE regulations generally)*
 - *Products to no longer be marketed as disposable.*
 - *Products to be clearly marked as recyclable.*
2. The new products highlighted above may still be appealing to children. We recognise that the SI The Environmental Protection (Single-use Vapes) (England) Regulations 2024 does not purport to be attempting to reduce the attractiveness of the products to children and

focuses solely on the environmental impact. However when the ban was announced it was very clearly stated that the ban would be to protect children's health - [Disposable vapes banned to protect children's health - GOV.UK \(www.gov.uk\)](#). We would urge government to move quickly to publish the promised Tobacco and Vaping Bill and to consult widely on the measures designed to suppress demand for the products from children.

3. We would also highlight the issue of public perception. There has been an outcry about the detrimental impact of disposable single-use vapes on the environment and nearly 70% of respondents to the "Creating a Smokefree Generation" consultation supported a ban on sale and supply of disposable vapes. We are concerned that post April 2025, the media and public will expect not to see disposable vapes for sale. We would highlight the fact that illegal disposable vapes will still be available (and reiterate our points about increased resources to tackle) but also that many of the new compliant products **look like** single-use disposable vapes even though they are not. We would request robust communications from government to ensure that the market changes are understood by the public and support demonstrated for the role that Trading Standards play in enforcing regulations to protect the environment as well as our communities.

To return to the substantial part of the vape market which consists of illegal products. With this regulation, we will add to that part of the market currently compliant products which will no longer be compliant. That includes 0% nicotine single-use disposable vapes. At the current time, we have no estimate for the share of the 0% market which is supplied by producers, distributors and retailers of illegal products but have no reason to believe it will be less than the current estimate of 30%. These are additional illegal products which will only be illegal under the new SI, not under any of our other vaping regulations which we enforce.

To help support businesses in understanding which products can and cannot be sold, we recommend that MHRA are able to technically and legally prevent single-use vapes which fall under the definition in the draft Regulations from being approved through their portal AND remove any already approved from the register.

Specific comments on the draft regulations

VAPING SUBSTANCES OTHER THAN TOBACCO

The definition refers to any substances other than tobacco which is intended to be vaporised or aerolised with a vape. We would highlight the fact that vaping substances which contain illegal drugs such as Spice or THC, are a police matter and this regulation should not be relevant.

POWERS

In order to effectively tackle any illegal market, we need to utilise the full set of powers set out in Parts 3 and 4 of Schedule 5 of the Consumer Rights Act 2015. These powers were considered and debated over a substantial amount of time, and we do not feel it is helpful to try to reinvent the wheel or start from scratch with a completely different set of powers which do not help us tackle the key issues. We have highlighted below which key powers are missing from the SI, but we would strongly suggest that to overcome this issue, the Environmental Protection (Single-use Vapes) (England) Regulations 2024 is included in Part 2 of Schedule 5 of the Consumer Rights Act 2015 – "The Enforcer's Legislation". If this were the case, almost all of the issues would be addressed.

1. It would appear in regulation 9 (1) (b) that an Enforcement Officer can only be accompanied by another (authorised) enforcement officer. There will be occasions when officers may want to be accompanied by others such as technical experts or dog handlers for example. It is also highly likely that more than 2 Officers would wish to be involved in an enforcement visit. Such a restriction is not present in any other Trading Standards enforced legislation.
2. There are no obstruction provisions and consequences for persons who obstruct officers. These are standard in most Trading Standards enforced legislation.
3. There is no power to seek reasonable assistance from individuals.
4. There is no power to require locked containers to be opened or to break open such containers where appropriate (for example, a concealment)
5. There is no power to make test purchases.
6. There are no powers of seizure, only the power to take samples.
7. There are no forfeiture provisions to allow seized Single-use Vapes to be forfeited by the court, similar to that contained in Regulation 19 of General Product Safety Regulations 2005. This is a relatively simple and cost-effective measure which would assist local authorities.

REGULATOR

We recommend that the definition of regulator in the interpretation should be amended to Local Weights and Measures authority in order to ensure all Trading Standards departments can enforce.

PENALTIES

To have the most impact as an effective deterrent to anyone supplying illegal vapes or considering supplying illegal vapes, the penalties have to be substantial and significant. We absolutely welcome the ability to impose a fixed penalty notice on a business supplying such products but would highlight that it needs to be a considerable amount to be effective. We are concerned that low-level penalties will not be appropriate in many circumstances especially where there are multiple or repeat offences.

We note the opportunity to serve an Enforcement Costs Recovery Notice against those we are serving penalties on for breaching the regulations to try to recover some of our costs – however, we note that *“Each regulator must publish guidance about its use of enforcement cost recovery notices”*. We think it is unnecessary given the low level of fines but if it needs to be in there, we would request templates to ensure a consistent approach to such guidance.

We would also like Defra to consider adding in to the SI the ability to also take action against officers of a body corporate as per Regulation 52(1) in the Tobacco and Related Products Regulations 2016. This can assist in obtaining director disqualification and supports business compliance.

FOR FURTHER INFORMATION

CTSI is happy to work with the DEFRA and other agencies and contribute to work in this area in order to protect consumers and protect reputable businesses.

Please contact Duncan Stephenson, Director of External Affairs for further information (duncans@tsi.org.uk or 07557 229 774)