

UK Government TRPR consultation 2021 - Knowledge•Action•Change response

In March 2021, K•A•C submitted a response to the UK Government's consultation on the Tobacco and Related Products Regulations 2016 (TRPR).

Full details of the consultation can be accessed at the UK Government website:

[A consultation on the Tobacco and Related Products Regulations 2016 and the Standardised Packaging of Tobacco Products Regulations 2015](#)

In this document, you can read K•A•C's responses to the consultation questions reproduced below. Please note that K•A•C only submitted responses to these questions. For further information or queries, please contact info@kachange.eu

E-cigarettes

Question 6: How far do you agree or disagree that the current regulations on e-cigarettes have been proportionate in protecting young people from taking up use of these products?

strongly agree

agree

neither agree or disagree

disagree

strongly disagree

don't know

Please provide a reason for your answer and any evidence to support this.

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As data in PHE's February 2021 evidence review update (1) demonstrates and as the introductory text to this question acknowledges, regular use of e-cigarettes by young people in the UK is very low. Current regulations are not enabling, and could be considered to be protecting, young people from uptake. However, we consider that effective enforcement of existing age of sale restrictions (under separate legislation) is actually more important than the TRPR regulations in maintaining the UK's low rates of youth e-cigarette uptake (2).

In considering proportionality, we propose that the current regulations are disproportionately weighted towards prevention of young people's potential future uptake of e-cigarettes. This has the effect of failing to fully realise potential to reduce the actual and current harms caused by adult smoking. Overly restrictive in some key areas, the regulations are deterring adult smokers from switching. We will discuss this in our responses to questions 7 - 9.

It should not be overlooked that smoking initiation among children and young people is highly influenced by the adults who surround them. Children living in households with parents or siblings who smoke are up to three times more likely to become smokers than children living in non-smoking households (3). Making it easier for adults to stop smoking - with one route being the use of e-cigarettes - has the benefit of reducing smoking rates among adults, while simultaneously reducing smoking uptake among children and young people. Recognising the benefit of upstream preventative action will be essential if the UK is to reach the goal of being smoke-free by 2030.

We would also ask the government to consider how best to support those under the age of 18 who are already smoking. For example, in 2018, 5 per cent of 15 year olds in England defined themselves as 'regular smokers' and children classified as 'regular smokers' smoked an average of 24.7 cigarettes a week (4). **Consideration should be given to how those aged under 18 who are currently smoking, with the attendant health risks, could legally be given access to safer alternatives such as e-cigarettes as a harm reduction measure.** There is precedent for this, insofar as harm reduction interventions, e.g. needle exchange, is supported for under 18s experiencing substance use issues, and there is condom provision for the under 16s.

- (1) <https://www.gov.uk/government/publications/vaping-in-england-evidence-update-february-2021>
- (2) https://www.legislation.gov.uk/ukxi/2015/895/pdfs/ukxiem_20150895_en.pdf
- (3) https://ash.org.uk/wp-content/uploads/2019/09/190913-ASH-Factsheet_Youth-Smoking.pdf
- (4) https://ash.org.uk/wp-content/uploads/2019/09/190913-ASH-Factsheet_Youth-Smoking.pdf

Question 7: How far do you agree or disagree that the current regulations have ensured that e-cigarettes are available for those smokers who wish to switch to these products?

strongly agree

agree

neither agree or disagree

disagree

strongly disagree

don't know

Please provide a reason for your answer and any evidence to support this.

Vaping products are now widely available to the majority of adult smokers in the UK.

Consumers must be able to fund an initial outlay on a vaping device, which is then followed by on-costs for e-liquid. The widespread availability of lower-cost open tank systems means

that vaping is affordable for the majority of UK adult smokers who want to switch and the majority (77 per cent) of vapers use these devices (1). Closed or pod systems are more expensive to buy and use. It is still the case that most dependent smokers will see a reduction in costs compared to purchasing combustible cigarettes.

Notable exceptions in terms of access and affordability of vaping include some vulnerable and marginalised groups among whom smoking rates are disproportionately high, such as those living in extreme poverty, having poor mental health, or experiencing homelessness. Smoking rates among homeless adults are four times higher than the national average. Research trialling the provision of free e-cigarette kits to homeless adults who smoke has shown promising early outcomes with regards to uptake, retention and quit rates (2). **We would urge the government to consider how best to ensure that the most vulnerable and disadvantaged smokers are not left behind and how they might best access safer nicotine products.**

Many people who have successfully switched from smoking to vaping report that the ability to customise their vaping experience is an important part of its appeal. By definition, open tank systems offer increased flexibility and customisation compared to closed or pod systems and it is important that this benefit is preserved. A wide choice of flavourings in e-liquid is also essential (3). Specialist retailers play an important role in supporting consumers to switch away from smoking by identifying products that work for them. In some areas, smoking cessation services have developed positive working relationships with selected specialist retailers. This should be further encouraged.

The TRPR restrictions limiting nicotine strength to 20mg/ml or below are a major barrier to successful switching for dependent smokers and we explore this in more detail in our response to question 8.

Increasingly, misperceptions about risk are preventing smokers from switching (4). The government should amend regulations to permit the communication of evidence-based statements on the risk of vaping relative to smoking. We will discuss this further in our response to question 8.

- (1) <https://ash.org.uk/wp-content/uploads/2020/10/Use-of-e-cigarettes-vapes-among-adults-in-Great-Britain-2020.pdf>
- (2) For example:
<https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0240968>
- (3) <https://gsth.org/report/2020/burning-issues/chapter-3>
- (4) <https://www.gov.uk/government/publications/vaping-in-england-evidence-update-february-2021>

Question 8: What effect do you think the regulations have had on smokers considering switching to e-cigarettes?

encouraged
neutral
discouraged
don't know

Please provide a reason for your answer and any evidence to support this.

The current nicotine limit is too low and should be changed. For many dependent smokers, the 20mg/ml nicotine limit is too low to satisfy cravings. There is no scientific basis for the cap. The choice and personalisation offered by vaping is key to supporting the exit from dependent smoking. It is illogical that the heaviest smokers - those most likely to benefit from quitting smoking - are unable to choose e-liquids with a nicotine level likely to meet their needs. A lack of satisfaction with the vaping experience is cited by 80 per cent of smokers who have tried, but no longer use, e-cigarettes (1).

The most disadvantaged in society experience the highest levels of smoking-related death and disease - the poorest, those with a mental health diagnosis, other substance use issues and/or experiencing homelessness (2). These groups typically have high nicotine dependence. A recent small-scale study using high strength nicotine pods (59mg/ml) resulted in an impressive 40 per cent quit rate at 12 weeks among heavy smokers with a diagnosis of schizophrenia (3). We believe that the potential of e-cigarettes to tackle significant health inequalities is currently being hampered by the nicotine cap.

Health warnings on vaping products are misleading to those considering switching. They exaggerate the risks of nicotine use and focus on nicotine addiction, with no information on the comparative risk of cigarettes. The general public has a poor understanding of the risks of nicotine, with many people falsely believing it is nicotine which causes cancer. More than one in five smokers (21 per cent) who have not yet tried vaping stated in 2020 that they did not wish to substitute one addiction for another, a figure which increased from one in six (16 per cent) in 2019 (4). People are being put off switching to a proven less harmful alternative to smoking due to poor communication of the relative risk.

The restrictions on advertising which include health or quit claims or vaping products leave the majority of consumers dependent on the mainstream media for information on vaping, leaving them exposed to significant inaccuracies and misinformation.

- (1) <https://ash.org.uk/wp-content/uploads/2020/10/Use-of-e-cigarettes-vapes-among-adults-in-Great-Britain-2020.pdf>
- (2) <https://ash.org.uk/download/ash-briefing-health-inequalities-and-smoking/>
- (3) https://dspace.stir.ac.uk/bitstream/1893/30671/1/Phd%20Thesis%20Definitive%202022_01.2020.docx.pdf
- (4) <https://ash.org.uk/wp-content/uploads/2020/10/Use-of-e-cigarettes-vapes-among-adults-in-Great-Britain-2020.pdf>

Question 9: Do you consider the restrictions on e-cigarette advertising to be an effective way to discourage young people and non-smokers from using e-cigarettes?

yes

no

don't know

Please provide a reason for your answer and any evidence to support this.

Advertising restrictions should be amended to facilitate responsible, evidence-based and pragmatic promotion of this category of consumer products with the aim of encouraging smokers to switch. Manufacturers should be able to provide consumers with accurate quit-related information and relative risk health-focused information compared to smoking in advertisements. While current advertising restrictions are discouraging young people and non-smokers from using e-cigarettes, unfortunately we believe that the restrictions are also having the (presumably) unintended consequence of discouraging smokers from switching. As stated earlier in our response to question 6, we consider that effective enforcement of existing age of sale restrictions under separate legislation plays a more central role than the TRPR regulations in preventing young people from using vaping products.

Vaping and other safer nicotine products are still relatively new to the UK market. Accurate and responsible advertising is needed for consumers to become familiar with e-cigarettes and other safer nicotine products and their potential as a safer alternative to smoking.

The recent PHE evidence update concluded that vaping is better than NRT for quitting smoking and that nicotine vaping products are now the most popular quit aid in England, used by more than one in four (27.2 per cent) of smokers trying to quit in England in 2020 (1).

(1) <https://www.gov.uk/government/publications/vaping-in-england-evidence-update-february-2021>

Novel tobacco products

Question 10: How far do you agree or disagree that the requirements of TRPR on novel tobacco products are proportionate?

strongly agree

agree

neither agree or disagree

disagree

strongly disagree

don't know

Please provide a reason for your answer and any evidence to support this.

We consider that the requirements of the TRPR on novel tobacco products are disproportionate. All non-combustible products should be treated more favourably (or less restrictively) than combustibles in the regulations.

Heated tobacco products, despite available evidence pointing to their reduced risk profile in comparison to combustible tobacco products, are regulated more strictly than vaping products because they contain tobacco. The TRPR distinguishes only between tobacco-containing and non-tobacco containing products.

We propose that the regulations should shift to focus on whether a product is a combustible tobacco product or a non-combustible product, in order to accurately place the emphasis on reducing the health risk to consumers.

More extensive independent research into the health effects of heated tobacco products is required. However, in 2018, PHE reviewed 20 extant studies and noted the harm reduction potential of novel tobacco products: "The available evidence suggests that heated tobacco products may be considerably less harmful than tobacco cigarettes and more harmful than e-cigarettes." Yet the PHE document also stated that "with a diverse and mature e-cigarette market in the UK, it is currently not clear whether heated tobacco products provide any advantage as an additional potential harm reduction product." (1) We suggest that this view is short-sighted, failing to recognise the value of a range of options for those seeking to quit smoking and is out of step with the USA FDA assessment of the IQOS HTP. In July 2020 the FDA authorised the marketing of IQOS as a modified risk tobacco product (MTRP) and stated that issuance of the order is "expected to benefit the health of the population as a whole."(2).

Heated tobacco products are effective for some smokers and have been widely adopted in other countries, including Japan where our analysis shows that sales of combustible tobacco have dropped by a third since the products came to market (3). The ASH Smokefree GB survey reported that in 2020, only 10 per cent of the UK public had heard of heated tobacco products and one per cent had tried one (4). Although current use of the products is very low in the UK, we would suggest that rather than a lack of appetite among smokers to switch to these products, it is more likely due to low public awareness, at least in part as a consequence of their restricted status under the TRPR.

All non-combustible products (including e-cigarettes/vaping devices, pasteurised snus, nicotine pouches and heated tobacco products) are far less harmful to health than combustible products (for an overview see 5). For broad categorisations for regulatory purposes, there should be no differentiation within the non-combustible category based on

risk, but consumers should be able to access accurate information on the different risk profiles of the various products on the market to inform their decision-making.

- (1) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/684963/Evidence_review_of_e-cigarettes_and_heated_tobacco_products_2018.pdf
- (2) <https://www.fda.gov/news-events/press-announcements/fda-permits-sale-iqos-tobacco-heating-system-through-premarket-tobacco-product-application-pathway>
- (3) <https://gsthr.org/report/2020/burning-issues/chapter-2>
- (4) <https://ash.org.uk/wp-content/uploads/2020/10/Use-of-e-cigarettes-vapes-among-adults-in-Great-Britain-2020.pdf>
- (5) <https://gsthr.org/report/2020/burning-issues/chapter-4>

Anything else on TRPR?

Question 13: Is there anything else you would like to share on negative or positive impacts the regulations have had on topics not covered above? If so, please explain and include any evidence and research you may have to back your response.

We welcome the UK government's ambitious target for England to be smoke-free by 2030 and that of the Scottish government to achieve this by 2034 (we note that Wales and Northern Ireland have yet to set smoke-free target dates). However, with less than nine years left, we consider this to be a pivotal year if these targets are to have any hope of being met. Cancer Research UK estimated in February 2020 that England was likely to miss the target by seven years.(1)

While upholding strong tobacco control measures, the UK is rightly considered a global leader in the tobacco harm reduction field in its approach to e-cigarettes. Yet the potential of harm reduction for tobacco is only partially realised and much more could be done. An overhaul of the TRPR supporting a more rounded approach to harm reduction could prove a key lever in helping the UK drive the smoking rate down to the smoke-free goal of five per cent or less.

Regulation needs to be based on a distinction between combustibles and non-combustibles. We propose that under a revised TRPR, all safer nicotine products should be accessible, affordable and attractive to UK adults who smoke, to encourage people to make the switch. As noted in our answer to question 10, the TRPR framework is currently based on a distinction between tobacco-containing and non-tobacco containing products. Instead, prioritisation should be given to the health risks to consumers, with broad category distinctions made between combustible tobacco products or non-combustible products instead.

The restrictions placed on promotion of safer nicotine products by the TRPR leave smokers unaware either that the products exist or that they are far less harmful to health than smoking. It is not permitted for combustible cigarette packets to include information about safer alternatives: this should be changed.

Non-combustibles should be regulated in ways that minimise the risk of youth uptake, while maximising the appeal and benefits of switching to adult smokers. Children and young people who live with adult smokers will benefit from the adults around them successfully quitting smoking, and will be less likely to take up smoking themselves. Under 18s who smoke should also have access to harm reduction strategies.

It should be legal to sell snus on the market. Snus is a cheap, low technology, oral tobacco product. Thanks to the popularity of snus, Sweden is already “smoke free”. The country enjoys the lowest rate of smoking-related mortality in Europe and half the average EU rate for smoking-related disease (2). In Norway, there is a striking association between the rise in the use of snus and the disappearance of smoking among young women, where the prevalence of smoking among under 25s females has dropped to 1% (3). Pasteurised snus is far less risky to health than smoking, with decades of epidemiological evidence to support this assessment. The epidemiological evidence shows snus is not associated with diabetes, oral and pancreatic cancers, or cardiovascular disease (4).

The UK ban on snus is unusual internationally. The banning of snus is predominantly concentrated within the countries of the EU (5). There is no scientific basis for continuing the ban on snus as a safer nicotine product. Leaving the EU provides the UK with the opportunity to reverse the ban on the sale of snus.

We consider that the TRPR has failed to adapt to developments in technology, and that revisions to the TRPR must be future-proofed. For example, nicotine pouches (containing no tobacco) are a new alternative to smoking, but have had to be regulated under consumer products legislation. **The UK needs a regulatory framework that can cover all non-combustible nicotine products, drafted with recognition that further technological developments may emerge.**

Choice, flexibility and personalisation are key to helping smokers switch away from combustible tobacco for good. In contrast to how people typically smoke (often using one preferred brand), consumers who have switched to safer nicotine products often move between different product categories depending on the situation. E-cigarettes do not suit everyone; the UK’s approach to harm reduction currently favours vaping over other categories of product. Policies should instead reflect that consumers and public health benefit from access to as wide a range of safer products as possible.

The UK has already had significant success in reducing smoking prevalence. But smoking rates are higher and falling more slowly in the UK’s more deprived communities. Unless people in lower socioeconomic groups stop smoking, it will not be possible to reach the



Promoting health through harm reduction

smoke-free by 2030 ambition (6). Smoking cessation brings significant economic benefits at both an individual level and a societal level. More people quitting smoking will contribute to the levelling up agenda and will help tackle the health inequalities that blight our most disadvantaged and vulnerable communities.

- (1) https://www.cancerresearchuk.org/sites/default/files/cancer_research_uk_smoking_prevalence_projections_february_2020_final.pdf
- (2) <https://gsth.org/resources/item/no-fire-no-smoke-global-state-tobacco-harm-reduction-2018> p 47
- (3) <https://gsth.org/resources/item/no-fire-no-smoke-global-state-tobacco-harm-reduction-2018> p 45
- (4) <https://gsth.org/resources/item/no-fire-no-smoke-global-state-tobacco-harm-reduction-2018> p 68
- (5) <https://gsth.org/report/2020/burning-issues/chapter-6>
- (6) https://www.cancerresearchuk.org/sites/default/files/cancer_research_uk_smoking_prevalence_projections_february_2020_final.pdf