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Summary of ELFBAR response to the Government consultation

“Creating a smokefree generation and tackling youth vaping: your views”

In Summary

- More than 6 million UK adults still smoke. As such, action is needed to meet the Government’s smokefree 2030 ambition (2034 in Scotland).
- Vaping is a proven cessation tool and single-use products are particularly important - 79%¹ of those adults that quit smoking in the past year have used either ELFBAR or Lost Mary as part of that journey.
- More than 40% of vapers use fruit flavours. A further 8%² use flavours such as cola. Flavours are therefore vital to adult choice and their journey to quit smoking.
- We have taken various steps to address youth access and the appeal of our products, as well as focussing on environmental concerns as set out further in our response.
- There is a clear need to regulate the retailing of vapes. Therefore, introducing a retail licensing system will help remove many of the irresponsible vendors from the market, as will restrictions on the display of vapes in stores.
- It is the wrong time to introduce a vape excise tax as it will further deter smokers wanting to quit. New research shows that 37% of adults who use vapes to quit smoking will either purchase illegal vapes, switch back to smoking or smoke more if such a tax were introduced³.
- The Government needs to strike a clear balance between tackling youth access and the environmental impact of single-use vapes, addressing the prevalence of illegal products, but crucially not deterring the 6 million adult smokers from using vapes as a cessation tool.

Generational ban on smoking

- We agree with the proposal to create a smokefree generation. Smoking is, as described in the consultation, the single most entirely preventable cause of ill health, disability, and death in the UK. That is why vaping products are so critical to further reducing the death and disease caused by smoking.

Restricting vape flavours

- Vaping and flavours play a critical role for adult smokers and ex-smokers. The latest research from Action on Smoking and Health (ASH) shows that fruit flavours are the most popular amongst those adults that vape.⁴

¹ Opinium research of 6,000 UK adults (Fieldwork August 2023)

² Opinium research of 6,000 UK adults (Fieldwork November 2023)

³ Opinium research of 6,000 UK adults (Fieldwork November 2023)

⁴ <https://ash.org.uk/uploads/Use-of-e-cigarettes-among-adults-in-Great-Britain-2023.pdf>

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- Having a range and choice of flavours is vitally important. This is supported by successive research that we have commissioned this year through Opinium. In August 2023, Opinium surveyed 6,000 UK adults. 37% of ex-smokers (quit in the past five years) and 46% of current regular smokers have tried or used a vaping device to help them quit. Of those, 39% used fruit flavours and a further 5% used other flavours such as cola most often. 65% of smokers and ex-smokers reported that flavours were important in their decisions to try or continue vaping as an alternative to smoking.
- Further research conducted by Opinium of 6,000 UK adults in November 2023, revealed that of those that vape, 41% used fruit flavours and 8% used other flavours, with cola and vanilla most often. This represents almost half of all those who vape. In addition, 36% of those who vape typically use one flavour, 24% two flavours and 36% and a range of flavours. 58% of those who vape use a fruit flavour once a week or more.
- We are members of the Independent British Vape Trade Association (IBVTA) and support its new code of conduct that delivers a clear commitment to supplying products and respective flavour names that accurately reflect the profile of the flavour. As such, we are continuing to review our flavour range and descriptors.
- Over-restricting vape flavours has clear consequences. A Yale-led study found that banning flavoured electronic cigarettes increased sales of conventional cigarettes. The study analysed retail sales over a five-year-period in US states that have banned flavours. “The research also notes that traditional cigarette sales have increased disproportionately for brands most often used by underage youth.”⁵
- In Finland, there are various restrictions on e-cigarettes, including a ban on flavours except tobacco and yet an article from a Finnish publication at the end of October 2023 cites a significant increase in young people vaping, with rates more than doubling since 2021 amongst 14–20-year-olds.⁶

Restricting point of sale displays & retail licensing

- We agree that current vape product displays in some stores need to be addressed and would support moving vapes to areas that are either behind or close to the counter. However, the retail landscape is quite broad. Supermarkets, vape stores, pharmacies and most convenience stores take a responsible approach to displaying age-restricted products. It is vital that vape products are not categorised in the same way as tobacco by being placed completely out of sight. This would further conflate the increasing perception, as per ASH’s own research⁷, amongst adult smokers that vaping is equally or more harmful than smoking (43% in 2023, representing a 60% increase since 2019).

⁵ <https://yaledailynews.com/blog/2023/11/02/yale-led-study-shows-that-e-cigarette-bans-boost-traditional-cigarette-sale/#:~:text=A%20recent%20Yale%2Dled%20study,and%20are%20considered%20more%20dangerous.&text=Seven%20states%20have%20banned%20flavored%20e%2Dcigarettes.>

⁶ [https://yle.fi/a/74-20056952#:~:text=One%20factor%20in%20the%20rising,according%20to%20the%20health%20institute.&text=Use%20of%20e%2Dcigarettes%20among,and%20Welfare%2C%20\(THL\).](https://yle.fi/a/74-20056952#:~:text=One%20factor%20in%20the%20rising,according%20to%20the%20health%20institute.&text=Use%20of%20e%2Dcigarettes%20among,and%20Welfare%2C%20(THL).)

⁷ <https://ash.org.uk/uploads/Use-of-e-cigarettes-among-adults-in-Great-Britain-2023.pdf>

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- Many problems associated with the display of vaping products are linked to stores that do not traditionally sell age-restricted products and openly promote these products in an inappropriate manner. This is why we advocate for a licensing system that can bring control to the retail landscape and remove retailers that do not adhere to responsible retailing practices for vaping products. According to the Opinium survey conducted in November 2023, 83% of 6,000 UK adults support some form of licensing system.
- There is also a logistical challenge for placing vapes behind the counter in smaller convenience stores, given that there is a range of products and flavours on the UK market, as well as the time it would take for retailers to address adult enquiries about products and flavours available. This may also restrict the opportunity to launch new vaping products if there is limited space and access to both the retailer and the adult consumer. Therefore, moving vapes behind the counter must clearly reflect practical applications of the measure to ensure it can work effectively.
- We support exemptions for specialist vape shops, provided there is a clear definition of a vape shop.

Regulating vape packaging

- We support a ban on “prohibiting the use of cartoons, characters, animals, inanimate objects, and other child friendly imagery, on both the vape packaging and vape device. This would still allow for colouring and tailored brand design.”
- Colouring and tailored brand design are important to adult consumers and reflected in our latest research. In November 2023, Opinium surveyed 6,000 UK adults. 39% agree that vape products should include some colour and branding to distinguish, for example, different flavours. However, there is much stronger support amongst smokers and ex-smokers (57% agree and 23% disagree).
- The same research asked smokers and ex-smokers if they would be inclined to continue or switch to vaping if products were sold in standardised packaging. One in five said they would be less inclined compared to one in ten who would be more inclined. This translates to a net figure of more than half a million current smokers who would be less inclined to vape if standardised packaging was introduced, resulting in a catastrophic failure in public health policy if such a measure was brought in, given the proven effectiveness of vaping as a smoking cessation tool.
- We urge the Government to be robust in considering the evidence on packaging in-depth. If product packaging changes to remove, for example, the cartoon imagery with the addition of regulations to address product displays, a licensing system, plus enforcement to deal with the illegal products available to children, this should address many of the current challenges. Adult smokers will continue to have access, sight, and choice of the vape brands they use or would like to use.

Restricting the supply and sale of disposable vaping products

- Single use vapes are very important for smokers during their journey away from tobacco. As multiple research studies show, adult users cite; ease of use, affordability, flavours, and availability as key reasons to try and continue using them. Single-use vapes act as a longer-term gate way to other forms of vaping products, as

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well as other forms of cessation. Opinium research commissioned in August 2023 showed that 3% of the 6,000 surveyed had quit smoking over the past year, and 79% of those had used ELFBAR or Lost Mary single-use products, whether to try them, use continuously or in combination with other vaping products or cessation products/services.

- The Opinium research commissioned in November 2023 also confirms higher smoking prevalence amongst lower income groups and the importance of vaping, with 49% of smokers and recent ex-smokers having used or continuing to use vaping products, and single-use products, in particular.
- Single-use products are particularly important to more vulnerable adult users or those who want the simplicity that they are used to with a combustible cigarette. This is supported by tobacco control groups such as Fresh NE⁸.
- ASH, Material Focus and the Chartered Trading Standards Institute (CTSI) have all previously set out their joint position on single-use vapes and do not advocate for a ban.
- The challenge concerning the environmental impact falls on the Government, the sector, and the consumer.
- We know from EU markets the challenge concerning recycling has been addressed differently through mixed vape and battery bins. This is different in the UK and therefore requires separate bin collections.
- We took the necessary steps regarding producer compliance and contribute to these schemes and have verified that all major importers of our products are also part of these relevant schemes.
- We have in operation a pilot project with Recover, a lithium battery collection company, to collect used vapes from across 160 stores in the UK, where the products are then taken to an AATF certified facility in the UK for disassembly. This is part of a project to create a closed-loop approach for single use products.
- All external recycling waste partners that we have engaged (including Material Focus) agree that single use vapes are an eminently recyclable waste stream. According to our recycling partners, up to 98% of our single-use vapes are recyclable and many components, including the battery, are reusable.
- What is needed is increased vape take-backs in retail stores, particularly in the convenience sector. And for the public to know that they can take back their used vapes for recycling through effective consumer facing campaigns, which is an upcoming focus of the IBVTA's campaign⁹. We announced the launch of 1,000 free vape bins to Scottish Grocers' Federation (SGF) members in October and will be rolling out the provision of up to 1,000 bins to a major UK retailer in December. This aligns with the many thousands of vape recycling points that exist across the UK and available through the Material Focus [recycling locator](#).
- We understand that millions of vapes are already being collected for disassembly and therefore it's vital the infrastructure is allowed to bed in properly. There is also a role

⁸ <https://ash.org.uk/media-centre/news/press-releases/ash-response-to-vaping-consultation-calls-on-government-to-urgently-implement-four-high-impact-interventions>

⁹ <https://www.ibvta.org.uk/explorethefacts/>

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for Government in supporting the end-to-end process to ensure that, for example, used batteries can be used either in the UK or exported for re-use to ensure that circular approaches are delivered effectively. And we understand that The Department for Environment, Food and Rural Affairs (Defra) will shortly consult on a new stream for vapes under waste electrical and electronic equipment (WEEE) recycling that we believe will further enhance recycling rates.

- In terms of restrictions the focus should rightly be on the proliferation of illegal products in the UK at present, including the so-called big puff devices that are increasingly popular. This comes back to proper enforcement at the border and inland. These producers and importers are not part of producer compliance schemes and do not seemingly care about the environmental impact. These products are also not tested via the Medicines and Healthcare products Regulatory Agency (MHRA) and present a clear public health risk.

Affordability

- Price is clearly a factor in purchasing considerations, and for single-use vapes this is one of the key reasons cited by adults for adoption.¹⁰
- We would not oppose the introduction of a proportionate excise on vapes if the UK properly addressed the illicit market, which is really the key challenge as well as the access point for many young people.
- It is also important to reflect that there remains a very substantial illicit tobacco market, and according to HM Revenue & Customs (HMRC), prices of illegal cigarette products are typically around £5-6 per 20. If a significant proportion of adult smokers are obtaining cigarettes at these prices, then they will have no incentive to switch to, for example, single-use vapes if they are priced at £10-11 (based on a £5 excise previously proposed by ASH¹¹). ASH also argues that the introduction of an excise would bring vapes under the jurisdiction of HMRC and while we would support additional enforcement capacity, the illegal tobacco market is still worth, according to the latest tax gaps report, £2.2bn in 2021/22¹².
- Opinium research from November 2023 shows that one in four adults are aware of illegal vapes being sold in their area within the past three months, which reflects wider media reporting of the problem. From partnerships with experts in this area, we already know that counterfeit versions of our products are available in the UK. There is a clear risk that an excise would exacerbate this problem.
- According to media reports, so-called big puff devices are increasingly prominent and appealing to children due to their longevity and price point. They are illegal and should be stopped from entering the UK and sold to children. By cleaning up the

¹⁰ Opinium research of 6,000 UK adults (Fieldwork August 2023)

¹¹ <https://ash.org.uk/media-centre/news/press-releases/ash-calls-on-chancellor-to-tax-disposable-vapes#:~:text=As%20a%20first%20step%20ASH,bought%20for%20under%20a%20fiver.>

¹² <https://www.gov.uk/government/statistics/measuring-tax-gaps/3-tax-gaps-excise-including-alcohol-tobacco-and-oils#:~:text=The%20duty%20gap%20for%20tobacco,tax%20year%202021%20to%202022.>

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illegal and non-compliant sector, then there may not even be a need for excise on vaping products.

- The Opinium survey of 6,000 UK adults in November 2023 asked adult smokers and vapers what they would do if a £5 excise was applied to vaping products. 37%¹³ of adults who use vapes to quit smoking will either purchase illegal vapes, switch back to smoking or smoke more. In short, a £5 excise would have an incredibly undesirable impact.
- These findings support previous research that we commissioned from Opinium of 1,000 adults in Scotland in July 2023. Therefore, if an excise is considered, it must address the challenge of smokers who buy illegal tobacco products at much lower price points, the widespread availability of illegal vapes and the impact that a vape excise would have on smokers and vapers behaviour.

Enforcement

- While we support the resources allocated to Trading Standards for Operation Joseph, additional resources must be allocated through the £30mn funding announcement for law enforcement specifically to trading standards, including the provision of more trading standards officers, whose resources have depleted in recent years. Banning the sale of legal single use vapes will simply lead to a further acceleration in the illegal market.
- So-called big puff devices are incredibly problematic. They appeal to users because they inevitably last longer but are in clear breach of UK regulations concerning the 2ml capacity. They are therefore already restricted but it requires enforcement resources both upstream and downstream to tackle them. This is also problematic for consumers who do not necessarily know what is and what is not an illicit product. There is clearly a role for government working with the sector to better educate consumers on what is a legal product. We are currently running business-facing campaigns with the Association of Convenience Stores (ACS) and SGF to report illegal vapes in conjunction with FACT¹⁴ and its partnership with Crimestoppers. We are also working with the Independent British Vape Trade Association (IBVTA) to run consumer facing campaigns to draw attention to the issue and encourage reporting.
- Low level fines will not deter those who blatantly breach the rules. Defra, for example recently increased fixed penalty notices for various environmental breaches, therefore we would suggest a minimum of a £500 fixed penalty notice, that should be routinely reviewed. We know from our latest research of the perceived scale of illegal vapes the Government should use significant deterrents to address this challenge.

For enquires or more info, please contact: pr@elfbar.com

¹³ Opinium research of 6,000 UK adults (Fieldwork November 2023)

¹⁴ <https://www.fact-uk.org.uk/>