

European Tobacco Harm Reduction Advocates' submission to UK government consultation on tobacco and related products legislation, March 2021

Link to consultation:

[Tobacco and related products legislation introduced between 2015 to 2016: reviewing effectiveness](https://www.gov.uk/government/consultations/tobacco-and-related-products-legislation-introduced-between-2015-to-2016-reviewing-effectiveness/consultation-on-the-tobacco-and-related-products-regulations-2016-and-the-standardised-packaging-of-tobacco-products-regulations-2015)

<https://www.gov.uk/government/consultations/tobacco-and-related-products-legislation-introduced-between-2015-to-2016-reviewing-effectiveness/consultation-on-the-tobacco-and-related-products-regulations-2016-and-the-standardised-packaging-of-tobacco-products-regulations-2015>

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.

Data has consistently shown that UK youth are not vaping in significant numbers and that vaping amongst non smoking youth is rare. PHE's [Vaping in England: 2021 evidence update summary](#): states that there have been "little change in levels of vaping over the last few years" and also that "Most young people who had never smoked had also never vaped. Between 0.8% and 1.3% of young people who had never smoked were current vapers." (1)

Out of all the legislation in this area it is likely that the legislation banning sales to under 18's - the Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations 2015 - will have had the most effect. However, it is also possible that youth vaping numbers are low because young people are just not that interested in vaping anyway.

The current TRPR regulations place barriers in the way of adults who might want to quit smoking using vaping products. The 20mg/ml nicotine limit, the alarmist health warnings, the tank and refill bottle limits and the overly restrictive advertising regulations are a hindrance to adult smokers wishing to use e-cigarettes to quit. The main risk factor for a young person to become a smoker is whether family and friends smoke. Making it easier for adults to stop smoking helps to prevent their children from becoming smokers. The current regulations are therefore not proportionate in preventing youth **smoking**.

(1) Vaping in England: 2021 evidence update summary

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

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

This submission is made on behalf of European Tobacco Harm Reduction Advocates (ETHRA). We are an alliance of 22 grass root consumer groups in 16 European countries, representing approximately 27 million consumers across Europe and supported by scientific experts in tobacco control or nicotine research (1). We are ex-smokers who have used safer nicotine products, such as vapes and snus, to quit smoking and to remain smoke-free. ETHRA is not funded and has no industry conflicts of interest. We have a unique pan European perspective on how smokers are using safer nicotine products. We know that vaping products are far more accessible to adult smokers in the UK than in many other European countries and we commend the UK government for maximising the opportunities offered by e-cigarettes. Smoking rates are falling in countries, like the UK, where safer alternatives to smoking are widely used. In Sweden and Norway it is widespread availability of the pasteurised tobacco product called snus which is responsible for sharp drops in smoking prevalence. In Sweden, smoking has fallen to close to the EU's target for 2040 – daily smoking is 5% and current smoking 7% of adults. Lower smoking rates have translated to lower levels of cancer and other serious diseases in Sweden, especially among men, the main snus users. Smoking is down to 1-2% among young women in Norway now – signalling the emerging prospect of a smoke-free generation. Having a wide variety of affordable and attractive alternatives to smoking available (not only vaping products) will give the UK the best chance of reaching its smoke free target.

Vaping products are widely available in the UK and they are affordable for most people. It is crucial for open tank systems to remain on the market, because these are far cheaper for consumers than closed pod systems. It is also essential to permit a wide variety of flavours to be sold, as flavours are intrinsic to vaping's success at winning over smokers (2).

Vaping is affordable for most people but not for everyone - and we know that smoking prevalence is highest amongst those in the lowest socio economic groups. The UK's ambitious aim to be smoke free by 2030 will not be reached unless the least well off can access affordable and attractive alternatives to smoking. It is regrettable too that most stop smoking services are still reluctant to recommend vaping to smokers. The UK government will need to think creatively to find strategies to tackle these issues.

(1) <https://ethra.co>

(2) How does the use of flavored nicotine vaping products relate to progression towards quitting smoking? Findings from the 2016 and 2018 ITC 4CV Surveys

<https://pubmed.ncbi.nlm.nih.gov/33631007/>

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

encouraged
neutral
discouraged
don't know

More smokers would have switched to vaping were it not for some of the pointless restrictions in the TRPR. The nicotine limit of 20mg/ml means that many smokers do not find vaping sufficiently satisfying and prevents the convenient pod devices from giving an effective nicotine hit. The 20mg/ml limit on nicotine e-liquid concentrations was negotiated in TPD negotiations in 2013 but since then evidence has become available which shows that it is needlessly low. The limit should be lifted in order to make vaping more satisfying for dependent smokers. (1)

The restrictions on refill bottle sizes and on tank sizes make vaping more fiddly than it needs to be and are a huge barrier for those with dexterity issues, including older people. These restrictions also create more environmental waste.

The excessive mandatory health warnings overstate the risks of vaping and are deterring smokers from trying vaping (2). The prominence (size, placement, colour and typeface) and the alarming wording suggest far greater risk than there is. The warnings are similar in style to those used on cigarettes, yet the risk is a small fraction of the risk of smoking. This tilts perceptions in favour of the more dangerous products. The warnings about nicotine have the effect of reinforcing the widespread misunderstanding that it is nicotine, not smoke, which is the most significant cause of harm. E-cigarettes only represent a fraction of the risk of combustible tobacco products and the warning labels should reflect this difference in risk.

PHE's [Vaping in England: 2021 evidence update summary](#) states: "*Perceptions of the harm caused by vaping compared with smoking are increasingly out of line with the evidence*", with 38% of smokers believing vaping to be as harmful as smoking (3). As ex smokers we know that having the knowledge that vaping is less harmful to health is a prime motivator to switch. Some of the TRPR regulations are feeding the misperceptions and preventing smokers from switching.

Advertising regulations are overly restrictive. Health or quit claims are not permitted but there is now sufficient evidence to explore potential regulatory change there. The UK leads the way with research into safety and use - notably, the Cochrane review referred to in the explanatory notes to this consultation and the annual PHE evidence updates. This knowledge should be used to develop effective public health strategies, now that the UK no longer has to comply with EU regulations. Canada and New Zealand are developing government approved risk statements and the UK should consider doing the same. These statements could be used in advertising and in cigarette pack inserts. We believe this would give more smokers the confidence to switch.

(1) Response to the Canadian Consultation on Proposed Concentration of Nicotine in Vaping Products Regulation, Professor Lynne Dawkins, Dr Sharon Cox, Dr Catherine Kimber

<https://www.clivebates.com/documents/CanadaDawkinsFeb2021.pdf>

(2) Does the content and source credibility of health and risk messages related to nicotine vaping products have an impact on harm perception and behavioural intentions? A systematic review

<https://onlinelibrary.wiley.com/doi/10.1111/add.15473>

(3) Vaping in England: 2021 evidence update summary

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

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

As we have said above, we feel that out of all the legislation in this area it is the age of sale restrictions which have had the largest effect on discouraging youth vaping. The advertising restrictions unfortunately discourage **everyone** from using e-cigarettes, including adult smokers. Vaping products are new and evolving products and advertising is essential for consumers to know that they exist and how to use them. The TRPR prohibits advertising in most media and does not permit health or even quit claims to be made. There is now sufficient solid evidence - as outlined in the preface for this consultation - to explore potential regulatory change there. Current advertising restrictions favour the incumbent combustible cigarette, which everyone is aware of and knows how to use.

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

Heated tobacco products (HTPs) are the only products currently on sale which are in this category, so our answer will address those. HTPs are regulated more strictly than vaping products, and are subjected to a display and advertising ban. However, like vaping products, HTPs are used by people wishing to stop smoking and are far less harmful to

health than smoking combustible tobacco. In October 2019 The U.S Food and Drug Administration determined that authorising IQOS (a HTP product) was “*appropriate for the protection of the public health*” (1).

Simonavicius et al’s [Heat-not-burn tobacco products: a systematic literature review 2018](#) (2) finds that “*HnB exposed users and bystanders to toxicants, although at substantially lower levels than cigarettes.*”

HTPS are estimated to be slightly more harmful to health than vaping products. However, in comparison with smoking, HTPs are far less harmful to health - and this is the only relevant comparator here. In [2017 The Committee of Toxicity assessed the possible risks in relation to smoking:](#)

“As the exposure to compounds of concern in the aerosol is reduced compared to conventional cigarette smoke, it is likely that there is a reduction in risk, though not to zero, to health for smokers who switch completely to heat-not-burn tobacco products.” (3)

HTP use is very low, [PHE’s latest review](#) (4) states that: “*Since 2017, prevalence of heated tobacco products has remained under 1% and shows no evidence of increase over time.*” (page 103). This is hardly surprising, as the display and advertising bans prevent smokers from being aware that HTPs exist.

HTPs are regulated more strictly because they are a tobacco product. However, the distinction between tobacco containing and non tobacco containing products is meaningless in health terms. It is not tobacco itself which is especially harmful to health, it is the method of delivery - combustion - which causes smoking related disease and death. Vaping is not a magic bullet for all smokers and so all safer nicotine products, including HTPs, should be made as accessible as possible.

- (1) FDA permits sale of IQOS Tobacco Heating System through premarket tobacco product application pathway
<https://www.fda.gov/news-events/press-announcements/fda-permits-sale-iqos-tobacco-heating-system-through-premarket-tobacco-product-application-pathway>
- (2) Heat-not-burn tobacco products: a systematic literature review, Simonavicius et al
<https://tobaccocontrol.bmj.com/content/tobaccocontrol/28/5/582.full.pdf>
- (3) Committee on Toxicity, Statement on the toxicological evaluation of novel heat not-burn tobacco products
https://cot.food.gov.uk/sites/default/files/heat_not_burn_tobacco_statement.pdf
- (4) Vaping in England: an evidence update including vaping for smoking cessation, February 2021, Public Health England
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/962221/Vaping_in_England_evidence_update_February_2021.pdf

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.

Brexit gives the UK the opportunity to diverge from the TPD, to develop policy which embraces the potential of safer nicotine products to help with reaching the smoke free goal. Vaping is a success story in the UK but e-cigarettes are not the only product out there - other products include snus, nicotine pouches and HTPs, all less harmful alternatives to smoking and attractive to smokers. In ETHRA we are ex smokers who have quit smoking using safer nicotine products. Many of us are from Scandinavia where snus is part of our cultural heritage, so we are very aware of the benefits of that. A large proportion of us are from countries where snus is banned, so we could only stop smoking when e-cigarettes came onto the market. Lots of us regularly use several products. We know how important it is to offer smokers a wide variety to choose from, both across and within product categories. All safer nicotine products are just that - vastly safer than smoking combustible cigarettes. Smokers deserve to have access to as wide a range of reduced risk products as possible. Variety is key to the success of safer nicotine products in winning over smokers.

We hope that the UK can move away from having a distinction between tobacco and non tobacco products and instead legislate according to whether products are combustible or non combustible.

Snus must be re-evaluated in the UK. Snus is a tobacco product which has played a key role in reducing smoking rates in Sweden to <5%. This has had huge benefits to public health: Sweden has Europe's lowest mortality attributable to tobacco (1). In 2019 the FDA granted modified risk orders to 8 snus products, concluding that "*completely switching from cigarettes to these authorized products lowers certain health risks*". This enables the specific products to be marketed as being less harmful to consumers. (2). Yet, despite the body of evidence that snus is less harmful than smoking, the sale of snus is banned by the TRPR.

The TRPR framework is not sufficiently flexible to capture new products. Nicotine pouches are an example of this. These entered the market after TPD2 and are increasingly popular amongst people wishing not to smoke. As safer alternatives to combusted tobacco, nicotine pouches should sit in the same regulatory framework as vaping products, HTPs and snus, yet in its current form the TRPR cannot accommodate them.

We are looking to the UK for independent leadership on tobacco harm reduction, to move beyond the obstacles presented by the TPD. If the UK does this it will be rewarded by drops in smoking prevalence - and we fervently hope that our governments will take some notice.

(1) Mortality attributable to tobacco among men in Sweden and other European countries: an analysis of data in a WHO report, Ramström, Wikmans

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4154048/>

(2) FDA grants first-ever modified risk orders to eight smokeless tobacco products

<https://www.fda.gov/news-events/press-announcements/fda-grants-first-ever-modified-risk-orders-eight-smokeless-tobacco-products>