

DEMOS

VAPING REGULATION IN 2022

IDENTIFYING GAPS IN
THE REGULATION OF
E-CIGARETTES

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INTRODUCTION & SUMMARY

There is a tangle of regulation governing the development, use and sale of e-cigarette products, which has evolved to set the parameters for their use and still encourage people to stop smoking traditional cigarettes. While the UK's smoking regulation is in many ways world leading, there is vast room for improvement if we are going to meet both of these objectives, protect the health and safety of vapers and smokers, and effectively support the wider public health agenda in the UK. A rebalancing is needed. This paper explores how this might be done.

E-cigarette products present a novel challenge to regulators in the UK. Repeated studies have shown the value of e-cigarette products to smokers as smoking alternatives, and over the past five years this value has been recognised in official advice from healthcare providers.¹ One 2019 clinical trial found e-cigarettes to be twice as effective in supporting people to stop smoking than other nicotine replacement products.²

Smoking remains the leading preventable cause of illness and premature death in the UK with an estimated 191,900 deaths attributed to smoking in England in the years 2017 to 2019.³ According to the latest data, 14 percent of adults in the UK smoke.⁴ It remains one of the main causes of health inequalities

in England, with the harm concentrated in disadvantaged communities and groups. ONS data suggests nearly a quarter of those on incomes less than £10,000 are current smokers, compared with just over 10% of those on incomes over £40,000. Tackling smoking should both be a major public health priority and a major priority in the levelling up agenda.

Policies encouraging e-cigarette use, however, need careful designing to avoid causing negative outcomes. First, poorly targeted policies could introduce those who do not smoke - who may never have smoked - to nicotine through e-cigarette products. Second, care must be taken not to incentivise the development of substandard or counterfeit products, posing a significant and substantial risk of harm to consumers. Finally, there is the risk that young people will be encouraged to use e-cigarette products - despite age restrictions, latest data shows that 16% of children 11-17 have tried vaping, an increase from 14% in 2020. This number rises to 29% for 16-17 year olds.⁵

The regulatory landscape, both here in the UK and in other markets, is shifting in real time. In the US, the Food and Drug Administration (FDA) recently issued a marketing denial order on the sale of JUUL products in the United States, citing a lack of

1 NHS. *Using e-cigarettes to stop smoking*. NHS. Available at: <https://www.nhs.uk/live-well/quit-smoking/using-e-cigarettes-to-stop-smoking/> (accessed 11/08/2022)

2 Hajek, P et al. *A Randomized Trial of E-Cigarettes versus Nicotine-Replacement Therapy*. The New England Journal of Medicine, 2019. Available at: <https://www.nejm.org/doi/10.1056/NEJMoa1808779> (accessed 11/08/2022)

3 Public Health England. *Local tobacco control profiles for England: short statistical commentary*, July 2021. PHE, 2021. Available at: [https://www.gov.uk/government/statistics/local-tobacco-control-profiles-for-england-july-2021/local-tobacco-control-profiles-for-england-short-statistical-commentary-july-2021#:~:text=There%20were%20an%20estimated%20191%2C900,period%20\(2017%20to%202019\).](https://www.gov.uk/government/statistics/local-tobacco-control-profiles-for-england-july-2021/local-tobacco-control-profiles-for-england-short-statistical-commentary-july-2021#:~:text=There%20were%20an%20estimated%20191%2C900,period%20(2017%20to%202019).)

4 Office for National Statistics. *Adult smoking habits in the UK: 2019*. ONS, 2020. Available at: <https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/healthandlifeexpectancies/bulletins/adultsmokinghabitsingreatbritain/2019> (accessed 11/08/2022)

5 Action on Smoking and Health. *Fears of growth in children vaping disposables backed up by new national survey*. ASH, July 2022. Available at: <https://ash.org.uk/media-and-news/press-releases-media-and-news/fears-of-growth-in-children-vaping-disposables-backed-up-by-new-national-survey/> (accessed 11/08/2022)

evidence that the products 'would be appropriate for the protection of public health".⁶

The FDA has since agreed to an administrative stay of its marketing denial order, until a regulatory review process is completed, allowing JUUL products to continue to be sold in the United States in the meantime, while noting the "scientific issues unique to the JUUL application that warrant additional review".

This incident shows the speed at which the world is changing - sharpening the imperative for the UK to develop and enforce regulation which strikes the right balance, and encourages smokers to switch without inadvertently causing harm.

This dilemma forms the basis for this paper. Regulation should likely improve access to e-cigarette products for those looking to quit smoking, while setting clear parameters around their use. We identify clear gaps in the regulation and find that the critical levers to close them are:

1. Stringent age verification processes at point of sale
2. Closing loopholes that make it legal to hand out free vape samples to children
3. Preventing e-cigarettes being displayed as 'impulse buy' products in shops
4. Tackling packaging that appeals to young people
5. Increasing the enforcement activities of existing e-cigarette regulations
6. Better protecting children from exposure to age-restricted products on social media

6 FDA (2022) FDA Denies Authorization to Market JUUL Products. Retrieved August 2022 from <https://www.fda.gov/news-events/press-announcements/fda-denies-authorization-market-juul-products>

BACKGROUND

To develop and apply regulation is to attempt complex action at a distance - aiming to indirectly change the behaviour of chaotic, human systems. As such, it's not always easy to predict what will work, and history is littered with examples of well-intended regulatory regimes causing unintended consequences. Interventions designed to prevent overfishing have led to stock being dumped overboard; attempts to guarantee farmers a fair price for produce led to mountains of butter and milk powder piling up in Europe; stringent restrictions on employers in Italy, designed to promote job security, have led to more people working in precarious 'under the counter' jobs.^{7, 8, 9}

Outside of the inherent chaos of our social, political and economic systems, there are more straightforward reasons why regulation can fail, from poor enforcement to narrow, inflexible design. One challenge is of particular interest when thinking about vaping in the UK. This is a type of regulatory leakage: how do we increase access to vaping products for adults looking for smoking alternatives while restricting access to nicotine products for non-smokers and children? How do we ensure the market for e-cigarettes continues to provide smokers with easy routes to trialling them while restricting access and appeal to young people?

This paper explores a range of potential regulatory approaches in public health in the context of this dilemma. It explores the current regulatory environment, highlighting areas where carefully tuned intervention could make a real difference. It also draws lessons from existing regulatory regimes, in the UK and worldwide, for example relating to anti-obesity drives and diet improvements.

Throughout, we focus on one core question: are there adjustments to be made that can ensure vaping is an attractive alternative to smokers while reducing access and appeal to non-smokers?

7 Milmo, C. *Thousands of tonnes of fish still thrown away at sea as Britain fails to enforce ban to conserve stocks*. i, February 2019. Available at: <https://inews.co.uk/news/uk/thousands-of-tonnes-of-fish-still-thrown-away-at-sea-as-britain-fails-to-enforce-ban-to-conserve-stocks-report-255692> (accessed 11/08/2022)

8 Livingstone, E. *Europe's hidden milk lake threatens fragile market*. Politico, January 2018. Available at: <https://www.politico.eu/article/europes-hidden-milk-price-lake-threatens-fragile-market-eu-commission/> (accessed 11/08/2022)

9 Melchiorre et al. *The Unintended Consequences of Italy's Labour Laws: How Extensive Labour Regulation Distorts the Italian Economy*. Economic Affairs, June 2013. Available at: https://www.researchgate.net/publication/264622190_The_Unintended_Consequences_of_Italy's_Labour_Laws_How_Extensive_Labour_Regulation_Distorts_the_Italian_Economy (accessed 11/08/2022).

ARE E-CIGARETTES HARMFUL?

E-cigarettes cause far less harm than tobacco products, and Public Health England estimates that they are 95% less harmful to health than smoking tobacco.¹⁰ Contrary to popular belief, nicotine does not cause cancer - the chances of developing lung cancer, heart disease and chronic obstructive pulmonary disease (COPD) - the leading causes of premature death among smokers - are introduced by the tar and smoke produced by burning tobacco, rather than the inhalation of nicotine.

Use of e-cigarettes is not entirely risk free. Along with most smoking alternatives, the vast majority of e-cigarettes deliver nicotine, an addictive substance which in rare cases can cause chest pains and palpitations - though serious adverse physical effects from nicotine are extremely rare.¹¹

The effects of vaping are still being studied, and it is crucial that regulators stay on top of advances in medical science when weighing options. For example, studies using rodents have suggested that exposure to nicotine during adolescence can disrupt parts of the brain responsible for attention, learning, mood and impulse control, sharpening the need for effective controls on underage use of products.¹² The Office for Health Improvements and Disparities (OHID) should continue their annual evidence updates so regulators can maintain an accurate and up-to-date understanding of the effects vaping has on young people's health.

10 Public Health England. *E-cigarettes around 95% less harmful than tobacco estimates landmark review*. PHE, August 2015. Available at: <https://www.gov.uk/government/news/e-cigarettes-around-95-less-harmful-than-tobacco-estimates-landmark-review> (accessed 11/08/2022)

11 Boyce et al. *Nicotine replacement therapy versus control for smoking cessation*. Cochrane Library, May 2018. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6353172/> (accessed 11/08/2022)

12 Slotkin, T A. *Nicotine and the adolescent brain: insights from an animal model*. National Library of Medicine, 2002. Available at: *Nicotine and the adolescent brain: insights from an animal model - PubMed (nih.gov)* (accessed 11/08/2022)

IS THE CURRENT FRAMEWORK WORKING?

The primary legislation covering the use and sale of e-cigarette products in the UK are “The Tobacco Products and Nicotine Inhaling Products Regulations”, last updated in 2020.¹³ This is enforced by multiple bodies. The Medicines and Healthcare products Regulatory Agency (MHRA) establishes safety standards for vaping devices, governing, for example, nicotine strength in products.¹⁴ The Advertising Standards Agency (ASA) specifies how these products can be marketed, and a network of local authorities, healthcare providers and transport services control where devices can be used.¹⁵ Based on evidence below, this system, designed to reduce smoking and prevent harm, is currently failing in both of these objectives.

As Demos has argued in previous papers, e-cigarettes have been found to be one of the most effective smoking alternatives and are substantially less harmful than tobacco smoking.¹⁶

¹⁷ Adult smokers should be encouraged to take

up vaping as a means to quit tobacco.^{18, 19} This position was echoed in a recent independent review of the government’s smoking reduction policies, published by Dr Javed Khan. One of four critical recommendations in this review called for the promotion of vaping, advocating for the government to ‘embrace the promotion of vaping as an effective tool to help people to quit smoking tobacco.’²⁰ As Khan goes on to say, encouraging smokers to switch is not a ‘silver bullet’, and it is crucial that UK regulation is able to keep pace with any potential harms.

Through restrictions on nicotine levels, bans on promotional advertising and the prohibition of e-cigarette sales to under 18’s, the aim of e-cigarette regulations is to protect the health and safety of vapers and prevent young non-smokers taking up vaping. However, existing regulations have consistently failed to provide these protections, allowing unsafe products to reach the market,

13 The Tobacco Products and Nicotine Inhaling Products (Amendment) (EU Exit) Regulations 2020 - retrieved 2022 from <https://www.legislation.gov.uk/ukdsi/2020/9780348212532>

14 Medicines and Healthcare products Regulatory Agency. *E-cigarettes: regulations for consumer products*. MHRA, February 2016. Available at: <https://www.gov.uk/guidance/e-cigarettes-regulations-for-consumer-products#:~:text=The%20requirements%3A,no%20more%20than%2020mg%2Fml> (accessed 11/08/2022)

15 ASA. *Electronic cigarettes CAP Code*. ASA. Available at: https://www.asa.org.uk/type/non_broadcast/code_section/22.html#:~:text=The%20Tobacco%20and%20Related%20Products%20Regulations%202016&text=The%20Regulations%20prohibit%20the%20advertising,set%20out%20in%20rule%2022.12 (accessed 11/08/2022)

16 Mackenzie, P. *Regulating the Future of Vaping*. Demos, March 2022. Available at: <https://demos.co.uk/project/regulating-the-future-of-vaping/> (accessed 11/08/2022)

17 Mackenzie, P and Dawson, A. *Myths and Misinformation: Mapping the barriers to smoking cessation and the uptake of nicotine alternatives*. Available at: <https://demos.co.uk/project/myths-and-misinformation-mapping-the-barriers-to-smoking-cessation-and-the-uptake-of-nicotine-alternatives/> (accessed 11/08/2022)

18 Mackenzie, P. *Regulating the Future of Vaping*. Demos, March 2022. Available at: <https://demos.co.uk/project/regulating-the-future-of-vaping/> (accessed 11/08/2022)

19 Mackenzie, P and Dawson, A. *Myths and Misinformation: Mapping the barriers to smoking cessation and the uptake of nicotine alternatives*. Available at: <https://demos.co.uk/project/myths-and-misinformation-mapping-the-barriers-to-smoking-cessation-and-the-uptake-of-nicotine-alternatives/> (accessed 11/08/2022)

20 Khan, J Dr. *Making Smoking Obsolete Independent review into smokefree 2030 policies Dr Javed Khan OBE*. OHID, June 2022. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1081366/khan-review-making-smoking-obsolete.pdf (accessed 11/08/2022)

and failing to stop underage purchases of vaping products.

CURRENT REGULATIONS ARE FAILING TO PROTECT E-CIGARETTE USERS

The UK is in the midst of an enforcement crisis around the sale of illicit vaping products. Despite the MHRA developing clear regulations restricting e-cigarette tank sizes, nicotine levels and strength, non-compliant products with inadequate health warnings, and tanks above the legal capacity have been found being sold in UK shops and by major online retailers.^{21, 22} According to the UK Vaping Industry Association (UKVIA), some distributors are managing to get these non-compliant products imported into the country and are selling them onto retailers, a problem compounded by a lack of scrutiny of online marketplaces.^{23, 24}

The current regulatory framework is also failing to prevent product safety disasters, putting vapers and those in their immediate surroundings at risk of harm. In the UK there have been incidents of e-cigarette batteries ‘exploding’ in people’s pockets, while poorly made or counterfeit chargers have caused house fires.²⁵ While incidents like these are rare in the UK, when they do happen they can cause severe long-term injuries. Much of this harm arises from a failure to control the distribution of products, with counterfeit and dangerous products available to customers buying online and on “dodgy” market stalls.^{26, 27, 28}

It is illegal to sell counterfeit or faulty products in the UK, including counterfeit vaping products, and in 2020 BEIS ran a campaign urging e-cigarette users to ‘take charge of battery safety’ by only

using genuine and recommended batteries for their vaping devices.²⁹ Despite this, counterfeit vaping accessories continue to reach consumers, who are unlikely to realise they’re buying a potentially dangerous product. More needs to be done to effectively prevent the sale of counterfeit products as well as making consumers aware of what products are and are not genuine, and the risks involved in making the wrong choice.

CURRENT REGULATIONS ACT AS A BARRIER TO GETTING SMOKERS TO SWITCH

As well as failing to protect people from the potential risks of e-cigarettes, some regulations, particularly on advertising, may be inhibiting efforts to get adult smokers to switch. As Demos laid out in *Myths and Misinformation*, misperceptions of the relative harms of vaping and nicotine are pervasive among both smokers and non-smokers, and are a key barrier to smokers’ willingness to switch.³⁰ These misperceptions are more common among lower socioeconomic groups, who are also more likely to smoke, making them a barrier to reducing health inequalities - our research found that people who don’t work (55% vs 44% of those who are working) are more likely to incorrectly believe that nicotine is the main cancer causing chemical in cigarettes.³¹

The incorrect belief that e-cigarettes are equally or more harmful than tobacco smoking is likely to prevent smokers from taking up e-cigarettes as a means to quit tobacco, and prevent smokers’ families and friends from encouraging them to switch. The recent Khan review proposes that a vaping facts website be created so health professionals can access accurate information on the relative harms

21 Medicines and Healthcare Regulatory Agency. *Advice for Retailers and Producers*. MHRA, March 2022. Available at: <https://www.gov.uk/government/publications/advice-for-retailers-and-producers> (accessed 11/08/2022)

22 UK Vaping Industry Association. *UK Vaping Industry Association calls for tough action against resellers of non-compliant disposable vape products*. UKVIA. Available at: <https://www.ukvia.co.uk/uk-vaping-industry-association-calls-for-tough-action-against-resellers-of-non-compliant-disposable-vape-products/> (accessed 11/08/2022)

23 Medicines and Healthcare Regulatory Agency. *Advice for Retailers and Producers*. MHRA, March 2022. Available at: <https://www.gov.uk/government/publications/advice-for-retailers-and-producers> (accessed 11/08/2022)

24 UK Vaping Industry Association. *UK Vaping Industry Association calls for tough action against resellers of non-compliant disposable vape products*. UKVIA. Available at: <https://www.ukvia.co.uk/uk-vaping-industry-association-calls-for-tough-action-against-resellers-of-non-compliant-disposable-vape-products/> (accessed 11/08/2022)

25 Rough, E. *The Regulation of E-cigarettes*. House of Common Library, January 2022. Available at <https://researchbriefings.files.parliament.uk/documents/CBP-8114/CBP-8114.pdf> (accessed 11/08/2022)

26 Rough, E. *The Regulation of E-cigarettes*. House of Common Library, January 2022. Available at <https://researchbriefings.files.parliament.uk/documents/CBP-8114/CBP-8114.pdf> (accessed 11/08/2022)

27 Mason, D. *Battery and Vape Safety – How to spot a fake 18650 battery, ohms law and more*. Vape and Juice Online, October 2019. Available at: <https://vapeandjuice.co.uk/blogs/vape-advice/battery-and-vape-safety>

28 Johnson, L. *Using Replaceable Vape Batteries: What You Need to Know*. Ashtray blog. Available at: <https://www.ecigarettedirect.co.uk/ashtray-blog/2018/07/external-vape-batteries-guide.html#Counterfeit> (accessed 11/08/2022)

29 DBEIS and OPSS. *Take charge of battery safety when using e-cigarettes*. February 2020. Available at: <https://www.gov.uk/government/news/take-charge-of-battery-safety-when-using-e-cigarettes> (accessed 11/08/2022)

30 Mackenzie, P and Dawson, A. *Myths and Misinformation: Mapping the barriers to smoking cessation and the uptake of nicotine alternatives*. Available at: <https://demos.co.uk/project/myths-and-misinformation-mapping-the-barriers-to-smoking-cessation-and-the-uptake-of-nicotine-alternatives/> (accessed 11/08/2022)

31 Mackenzie, P and Dawson, A. *Myths and Misinformation: Mapping the barriers to smoking cessation and the uptake of nicotine alternatives*. Available at: <https://demos.co.uk/project/myths-and-misinformation-mapping-the-barriers-to-smoking-cessation-and-the-uptake-of-nicotine-alternatives/> (accessed 11/08/2022)

of vaping and be in a better place to challenge misconceptions among smokers and encourage them to switch.³² If this is seen as a trusted source, this resource could provide a valuable official source of information, and could go some way to combatting misinformation.

Khan also proposes that vape shops should be allowed to support campaigns like Stoptober, and recommends the Government should modify advertising rules so vapes can be promoted as a “less harmful” product, and allow smokers to “see more messages that switching to vapes is hugely beneficial to their health”.³³ Current regulations prohibiting this kind of promotion by vape shops and in popular forms of media like TV broadly prevent this at present, and may be a barrier to tackling misperceptions and reducing the number of smokers in the UK.

In accordance with the legislation on e-cigarette advertising in the Tobacco and Related Products Regulations (TRPR), the ASA prohibits most advertising of nicotine-containing e-cigarettes which are not licensed as medicines.^{34, 35} While the MRHA has expressed an interest in certifying products for medical use, there are currently no vaping products available for sale which have achieved this certification.³⁶ As a result, there are severe restrictions on how e-cigarettes can be advertised.³⁷

These rules apply to television, radio, online or printed advertisements, but not outdoor posters and billboards.³⁸ While retailers are allowed to provide information about e-cigarettes on their websites, and in response to email requests (or other

electronic messages) from consumers for product information, this information must be ‘factual’ rather than ‘promotional’.³⁹ Where advertising is allowed, the ASA stipulates that it must not encourage non-smokers to try e-cigarettes.⁴⁰ Targeted marketing towards adult smokers is also restricted by these regulations - bans on retailers providing promotional information to consumers via email means marketers cannot send emails to known adult smokers promoting vaping as a smoking alternative. Further, TRPR prohibits inserts and additional materials in tobacco packs meaning inserts with switching messages are not allowed.⁴¹

There are clear risks to changing this stance. A 2015 study found that viewing e-cigarette advertisements on TV led to underage non-smokers having a more positive attitude towards e-cigarettes and a higher intention of trying e-cigarettes.⁴² Increasing ‘positive’ attitudes towards vaping among non-smokers is not necessarily a bad thing. Demos’ own research found that 32% of smokers said they were accessing information about vaping and smoking from friends and family⁴³ - if non-smokers have more accurate perceptions on the relative harms of vaping and in turn a more ‘positive’ attitude towards e-cigarettes as a useful tool to quit smoking, it means they are better placed to encourage their peers and family members who smoke to switch. However, advertising risks encouraging non-smokers, particularly underage non-smokers, to take up e-cigarettes themselves.

On the other hand, there is also evidence that e-cigarette advertising increases smokers’ willingness to transition to vaping. A US study from 2019 found that e-cigarette advertising on TV encourages adult

32 Khan, J Dr. *Making Smoking Obsolete Independent review into smokefree 2030 policies Dr Javed Khan OBE*. OHID, June 2022. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1081366/khan-review-making-smoking-obsolete.pdf (accessed 11/08/2022)

33 Khan, J Dr. *Making Smoking Obsolete Independent review into smokefree 2030 policies Dr Javed Khan OBE*. OHID, June 2022. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1081366/khan-review-making-smoking-obsolete.pdf (accessed 11/08/2022)

34 UKSI. *The Tobacco and Related Products Regulations 2016*. Available at: <https://www.legislation.gov.uk/uksi/2016/507/part/7/made> (accessed 11/08/2022)

35 ASA. *Electronic cigarettes CAP Code*. ASA. Available at: https://www.asa.org.uk/type/non_broadcast/code_section/22.html (accessed 11/08/2022)

36 Kent, C. *England could begin to prescribe e-cigarettes as medical products*. Medical Device Network, October 2021. Available at: <https://www.medicaldevice-network.com/analysis/is-an-e-cigarette-a-medical-device/> (accessed 11/08/2022)

37 ASA. *Electronic cigarettes CAP Code*. ASA. Available at: https://www.asa.org.uk/type/non_broadcast/code_section/22.html (accessed 11/08/2022)

38 Tobacco Tactics. *E-cigarettes: UK Marketing Rules*. Tobacco Tactics, June 2021. Available at: <https://tobaccotactics.org/wiki/e-cigarettes-marketing-rules/#:~:text=E%2Dcigarette%20Regulations%20from%202016,-In%202016%2C%20after&text=This%20Directive%20brought%20the%20bans,posters%20and%20billboards%20are%20permitted> (accessed 11/08/2022)

39 Committee of Advertising Practice. *Electronic cigarette advertising prohibitions*. CAP. Available at: <https://www.asa.org.uk/static/uploaded/545851fd-cd02-4b1b-a3d950d3886a438d.pdf> (accessed 11/08/2022)

40 ASA. *Electronic cigarettes CAP Code*. ASA. Available at: https://www.asa.org.uk/type/non_broadcast/code_section/22.html (accessed 11/08/2022)

41 Department of Health and Social Care. *Tobacco packaging guidance: Guidance for retailers, manufacturers and distributors of tobacco products, enforcement agencies and the public on tobacco packaging in Great Britain*. DHSC, April 2021. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/978513/tobacco-packaging-guidance-great-britain-april-2021.pdf (accessed 11/08/2022)

42 Farrelly, M C. *A Randomized Trial of the Effect of E-cigarette TV Advertisements on Intentions to Use E-cigarettes*. American Journal of Preventative Medicine, July 2015. Available at: [https://www.ajpmonline.org/article/S0749-3797\(15\)00233-0/fulltext](https://www.ajpmonline.org/article/S0749-3797(15)00233-0/fulltext) (accessed 11/08/2022)

43 Mackenzie, P and Dawson, A. *Myths and Misinformation: Mapping the barriers to smoking cessation and the uptake of nicotine alternatives*. Available at: <https://demos.co.uk/project/myths-and-misinformation-mapping-the-barriers-to-smoking-cessation-and-the-uptake-of-nicotine-alternatives/> (accessed 11/08/2022)

smokers to switch.⁴⁴ Another study of smokers in the US found that e-cigarette advertisements that emphasised the differences between e-cigarettes and traditional cigarettes - specifically the lower cost, relative “healthfulness” and usefulness of e-cigarettes as a tool to quit smoking - elicited greater interest from smokers to try vaping in comparison to ads that did not emphasise these differences.⁴⁵ This suggests advertisements in popular media forms, like TV, have the potential to tackle misperceptions and encourage smokers to switch - as long as they focus on promoting factual information on the relative harms of vaping in comparison to smoking.⁴⁶

While any modifications of advertising and marketing regulations must be extremely careful not to risk encouraging non-smokers to take up vaping, total bans on e-cigarette advertising in popular media forms may be a barrier to getting more smokers to switch. Likewise, regulations restricting even targeted marketing - like tobacco pack inserts and email marketing targeted towards known adult smokers - are also a barrier to encouraging change. Targeted marketing would allow switching messages to reach more adult smokers while limiting young people’s exposure to e-cigarette promotion.

In light of the potential for smokers’ family and friends to be utilised as valuable and trusted sources of information on smoking and vaping, it is important that messages promoting vaping as a less harmful alternative to smoking reach them as well. Modification of advertising and marketing rules should therefore allow messages promoting vaping as less harmful to better reach both smokers and the wider general public. We shouldn’t be missing opportunities to improve public health.

REGULATIONS ARE FAILING TO PROTECT YOUNG NON-SMOKERS

The sale of nicotine inhaling products to people aged under 18, including e-cigarettes, is illegal in the UK.⁴⁷ To bolster this, regulations are in place

to try and prevent underage non-smokers from taking up vaping. As has been discussed in Demos’ previous papers, e-cigarette use is far less harmful than smoking tobacco.⁴⁸ However, it is important that young people are prevented from taking up e-cigarettes when they don’t need to use them.⁴⁹ As will be discussed in more detail in the next section of this report, the regulations are in urgent need of an update here as well.

The key levers that aim to stop young non-smokers from taking up vaping include bans on selling e-cigarettes to people under the age of 18 and on advertising that appeals to young people. However, these often go unenforced - many young people report never being asked to show proof of age when buying e-cigarettes online or in shops, while social media content viewable without age restrictions has been found promoting and ‘glamourising’ vaping.^{50, 51} Branding and marketing of the products themselves is also an issue; sweet flavoured e-liquids and colourful branded imagery, both of which can be found on UK products, have been found to make young people who have never smoked more likely to want to try e-cigarettes.⁵²

We explore these issues, and identify areas in which they might effectively be addressed, below.

44 Dave, D et al. *Does e-cigarette advertising encourage adult smokers to switch?* Journal of Health Economics, December 2019. Available at: <https://www.sciencedirect.com/science/article/abs/pii/S0167629619301870?via%3Dihub> (accessed 11/08/2022)

45 Pepper, J K et al. *Effects of advertisements on smokers’ interest in trying e-cigarettes: the roles of product comparison and visual cues.* Available at: https://tobaccocontrol.bmj.com/content/23/suppl_3/iii31 (accessed 11/08/2022)

46 <https://publications.parliament.uk/pa/cm201719/cmselect/cmsctech/505/50503.htm>

47 See The Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations 2015 - retrieved July 2022 from <https://www.legislation.gov.uk/uksi/2015/895/regulation/3/made>

48 Mackenzie, P. *Regulating the Future of Vaping.* Demos, March 2022. Available at: <https://demos.co.uk/project/regulating-the-future-of-vaping/> (accessed 11/08/2022)

49 British Medical Association. *E-cigarettes: Balancing risks and opportunities.* BMA. Available at: <https://www.bma.org.uk/media/2083/e-cigarettes-position-paper-v3.pdf> (accessed 11/08/2022)

50 Tully, C. *Vaping: ‘I’m 17, and rarely ID’d for e-cigs’.* BBC News, October 2019. Available at: <https://www.bbc.co.uk/news/health-50045639> (accessed 11/08/2022)

51 Sun, T et al. *Vaping on TikTok: a systematic thematic analysis.* Tobacco Control, July 2021. Available at: <https://tobaccocontrol.bmj.com/content/early/2021/07/14/tobaccocontrol-2021-056619> (accessed 11/08/2022)

52 Vasiljevic M, Petrescu DC, Marteau T M. *Impact of advertisements promoting candy-like flavoured e-cigarettes on appeal of tobacco smoking among children: an experimental study.* Tobacco Control 2016. Available at: <https://tobaccocontrol.bmj.com/content/25/e2/e107> (accessed 11/08/2022)

APPEAL AND USE OF E-CIGARETTES REGULATING FOR GOOD

If e-cigarettes are to be an effective tool in reducing smoking, they must appeal to smokers as an alternative to tobacco, without appealing to non-smokers and underage consumers. This is a live issue: a number of studies over the past decade have examined the relationship between these groups and e-cigarette products.^{53, 54} Below, we highlight eight areas where targeted changes have the potential to change attitudes towards vaping. For each, we assess whether tightening restrictions would support or damage public health priorities.

1: BRANDING

A growing market encompassing multiple competing e-cigarette brands is prompting e-cigarette manufacturers to opt for eye-catching packaging - attempting to convey their brand's value and enhance their appeal among consumers. Products in the UK have included brightly coloured cartoon characters and references to well-known sweets

like 'gummy bears', a clear attempt at marketing e-cigarettes towards children.⁵⁵ Research has shown that young people (aged 11-18) in particular prefer e-cigarette packaging with branded imagery, raising concerns such e-cigarette packaging could encourage them to take up vaping.⁵⁶ The recent Khan review has called for "child friendly" cartoon packaging and descriptions to be banned while Action on Smoking and Health (ASH) has similarly suggested that brand imagery be removed from packaging to reduce the appeal of e-cigarettes to young people.^{57, 58} At present though, there are no regulations in the UK prohibiting the use of branded imagery on e-cigarette packaging.

Given that this same research also found that the removal of branded imagery made little to no difference on the preferences of adult smokers, removing branded imagery from packaging could be an effective way to reduce the appeal of vaping to underage people, without compromising adult

53 Cho, YJ et al. *Youth self-reported exposure to and perceptions of vaping advertisements: Findings from the 2017 International Tobacco Control Youth Tobacco and Vaping Survey*. King's College London, September 2019. Available at: [https://kclpure.kcl.ac.uk/portal/en/publications/youth-selfreported-exposure-to-and-perceptions-of-vaping-advertisements\(16ab676c-8545-4f4c-85cd-df883bd8141d\).html](https://kclpure.kcl.ac.uk/portal/en/publications/youth-selfreported-exposure-to-and-perceptions-of-vaping-advertisements(16ab676c-8545-4f4c-85cd-df883bd8141d).html) (accessed 11/08/2022)

54 University College London. *E-cigarettes not a substantial gateway to smoking for young people*. UCL News, March 2022. Available at: <https://www.ucl.ac.uk/news/2022/mar/e-cigarettes-not-substantial-gateway-smoking-young-people> (accessed 11/08/2022)

55 Campbell, D. *Health experts call for action on e-cigarette packaging aimed at children*. The Guardian. Available at: <https://www.theguardian.com/society/2021/aug/29/health-experts-call-for-action-on-e-cigarette-packaging-aimed-at-children> (accessed at 11/08/2022)

56 Action on Smoking and Health (ASH). *Use of e-cigarettes among young people in Great Britain*. 2021. Available at <https://ash.org.uk/wp-content/uploads/2021/07/Use-of-e-cigarettes-among-young-people-in-Great-Britain-2021.pdf>

57 Khan, J Dr. *Making Smoking Obsolete Independent review into smokefree 2030 policies Dr Javed Khan OBE*. OHID, June 2022. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1081366/khan-review-making-smoking-obsolete.pdf (accessed 11/08/2022)

58 Action on Smoking and Health. *Delays in regulatory reform leave children exposed to e-cigarette promotion*. ASH, July 2021. Available at: <https://ash.org.uk/media-and-news/press-releases-media-and-news/delays-in-regulatory-reform-leave-children-exposed-to-e-cigarette-promotion/> (accessed 11/08/2022)

smokers' willingness to switch.

In 2020, Israel introduced regulations requiring e-cigarettes and e-liquids to come in plain packaging. The Netherlands did the same in January 2022 in an attempt to reduce the appeal of vaping to young people.⁵⁹ New Zealand has stopped short of requiring plain packaging, but the use of cartoons and toys on packaging have been banned with retailers needing to conform to these new rules from August 2022.⁶⁰ It is too early to fully assess how successful these regulations have been or will be in reducing youth uptake of vaping, but they are useful ideas for how the UK's own regulations can make e-cigarette packaging more responsible.

2: SOCIAL MEDIA ADVERTISING/ INFLUENCING

Social media content often glamourises vaping. TikTok videos have been found portraying e-cigarette use in a 'positive' light through lifestyle references and 'how to' tutorials.⁶¹ A 2022 survey by ASH found that TikTok was most frequently cited by young people as the platform they see online e-cigarette promotion on (45%).⁶² While Tiktok's terms of service notionally require users to be at least 13 years old, vaping related videos are available to watch without age restrictions. While clearly branded marketing is covered under ASA rules, this user-generated content is murkier, and governed by platform's terms of service and broader online regulation. This offers a loophole to unscrupulous brands, allowing them to avoid ASA oversight by advertising through influencers without declaring their relationship.⁶³ Given the popularity of TikTok amongst young people in the UK, with half of 5-15 year olds having watched a TikTok video in 2020 alone,⁶⁴ the prevalence of this unregulated content could encourage underage non-smokers to take up vaping.

UK Advertising Standards state that e-cigarette marketing should not contain content that might encourage non-smokers to use e-cigarettes nor should it be likely to appeal to people under the age of 18. TikTok's own terms of service prohibit its users from posting "branded content" - content that promotes goods or services where the user will receive something of value from a third party in exchange for their post - which features or references e-cigarettes.⁶⁵ Despite this, a recent study of 808 vaping videos on TikTok found that 63% of those videos portrayed vaping positively, in the sense that they glamorised vaping, suggesting that the flouting of these regulations is pervasive.⁶⁶

In light of TikTok's predominantly young user base, the positive impacts stricter enforcement may have on 'de-glamourising' vaping amongst children will likely outweigh any risks of it making adult smokers less likely to switch.

A blueprint may be provided here by the ASA's response to social media 'affiliate' marketing, whereby social media influencers promoting a brand's products for payment are now required to announce the nature of this transaction, allowing those messages to be regulated under the CAP code.⁶⁷ The ASA are starting to crackdown on e-cigarette brands that are violating these rules - they recently ruled that the vaping retailer RELX had breached these regulations as its products were featured in an Instagram story posted by a reality tv star which included a discount code for their products. The ASA should seek to increase these enforcement activities.

Further, the UK government's Online Safety Bill provides a legislative justification here, specifying that "platforms likely to be accessed by children will need to prevent access to material that is harmful for children".⁶⁸ While Tiktok already prohibits the sale of e-cigarettes on the platform, there is potential here for regulators to compel platforms to ensure

59 Moodie, C. *Plain tobacco packaging: progress, challenges, learning and opportunities*. Tobacco Control, March 2022. Available at: <https://tobaccocontrol.bmj.com/content/31/2/263> (accessed 11/08/2022)

60 Verral, A Dr. *New Zealand voices shape vaping regulations*. Beehive.govt.nz, August 2021. Available at: <https://www.beehive.govt.nz/release/new-zealand-voices-shape-vaping-regulations> (accessed 11/08/2022)

61 Sun, T et al. *Vaping on TikTok: a systematic thematic analysis*. Tobacco Control, July 2021. Available at: <https://tobaccocontrol.bmj.com/content/early/2021/07/14/tobaccocontrol-2021-056619> (accessed 11/08/2022)

62 Action on Smoking and Health. *Fears of growth in children vaping disposables backed up by new national survey*. ASH, July 2022. Available at: <https://ash.org.uk/media-and-news/press-releases-media-and-news/fears-of-growth-in-children-vaping-disposables-backed-up-by-new-national-survey/> (accessed 11/08/2022)

63 Das, S and Ungoed-Thomas, J. *Chinese vaping giant flouting UK advertising rules on selling to children*. The Guardian, July 2022. Available at: https://www.theguardian.com/society/2022/jul/17/chinese-vaping-giant-flouting-uk-advertising-rules-on-selling-to-children?CMP=Share_AndroidApp_Other (accessed 11/08/2022)

64 Ofcom. *Children and parents: media use and attitudes report 2020/21*. 2021. Available at https://www.ofcom.org.uk/__data/assets/pdf_file/0025/217825/children-and-parents-media-use-and-attitudes-report-2020-21.pdf (accessed 11/08/2022)

65 TikTok. *Branded Content Policy*. TikTok. Available at: <https://www.tiktok.com/legal/bc-policy?lang=en> (accessed 11/08/2022)

66 Sun et al. *Vaping on TikTok: a systematic thematic analysis*. Tobacco Control, 2021. Available at: <https://tobaccocontrol.bmj.com/content/early/2021/07/14/tobaccocontrol-2021-056619> (accessed 11/08/2022)

67 ASA. *Online Affiliate Marketing*. ASA, August 2021. Available at: <https://www.asa.org.uk/advice-online/affiliate-marketing.html> (accessed 11/08/2022)

68 Department for Digital, Culture, Media and Sport. *Online Safety Bill: factsheet*. April 2022 Available at: <https://www.gov.uk/government/publications/online-safety-bill-supporting-documents/online-safety-bill-factsheet> (accessed 11/08/2022)

vaping use is not glamourised to non-smokers, especially on platforms predominantly used by the young.⁶⁹ Further, the Online Safety Bill includes a list of 'priority harms' to children - age restricted vaping and smoking content could be included in this list which would allow Ofcom - the UK's communication regulator - to take faster enforcement action against tech companies that fail to remove such illegal content.^{70, 71}

3: AVAILABILITY

It is not difficult to get hold of e-cigarettes in the UK. The number of high-street vape shops has increased substantially - there are currently around 2,900 vape shops in the UK, an increase from 1,000 in 2015.⁷² E-commerce sales are booming and e-cigarette products are available in many local and national grocery shops.^{74, 75}

Despite this availability, point of sale restrictions are thin and poorly enforced, with young people reporting they are frequently not challenged when buying e-cigarette products.⁷⁶ Trading standards investigations by UK councils have shown outlets routinely selling e-cigarette products to underage customers.^{77, 78} A 2022 survey by ASH found that shops are the most common source of supply for underage vapers (47%).⁷⁹

Availability is a crucial factor in allowing smokers to access e-cigarette products as part of smoking cessation. Reducing availability would run counter

to these aims. However, it is crucial that retailers effectively enforce existing law on sales to underage customers.

4: FREE SAMPLES

One form of marketing likely to increase vaping amongst non-smokers is the distribution of samples in public spaces. Free samples of vapes have been reported being handed out by e-cigarette companies to the public including children - in city centres, at festivals, and transport hubs - with underage people being offered these samples without being required to show proof of age.⁸⁰ This is not currently illegal: while regulations outlaw the sale of e-cigarettes to children, a loophole in the law means they can legally be handed out to them for free.⁸¹

We know the targeted provision of free samples can lower the barriers smokers face in switching to e-cigarettes. The Khan review recommends the expansion of the 'Swap to Stop' scheme, providing free vaping packs in deprived communities.⁸² This has been trialled around the country, with a 2019 scheme undertaken in Greater Manchester finding that 62% of those who had engaged with the service and started vaping had stopped smoking within four weeks, with the cost of each quit 'significantly lower' than through the county's standard stop smoking offer.⁸³

Regulation around distribution should not prevent healthcare providers and pharmacies from

69 TikTok. *Community Guidelines*. TikTok, February 2022. Available at: <https://www.tiktok.com/community-guidelines?lang=en#32> (accessed 11/08/2022)

70 The Digital, Culture, Media and Sport Committee. *The Draft Online Safety Bill and the legal but harmful debate: Government Response to the Committee's Eighth Report*. House of Commons, March 2022. Available at: <https://committees.parliament.uk/publications/9408/documents/161169/default/> (accessed 11/08/2022)

71 College of Policing. *Online Safety Bill to have new priority offences added*. College of Policing, March 2022. Available at: <https://www.college.police.uk/article/online-safety-bill-have-new-priority-offences-added> (accessed 11/08/2022)

72 Nott, G. *A vape a day: vaping & e-cigarettes category report 2022*. The Grocer, February 2022. Available at: <https://www.thegrocer.co.uk/category-reports/a-vape-a-day-vaping-and-e-cigarettes-category-report-2022/664706.article> (accessed 11/08/2022)

73 Royal Society for Public Health. *Health on the High Street Running on empty*. RSPH, 2018. Available at: <https://www.rsph.org/static/uploaded/dbdbb8e5-4375-4143-a3bb7c6455f398de.pdf> (accessed 11/08/2022)

74 Hegarty, R. *E-cigarettes: Online sales rise as vape stores close*. The Grocer, December 2020. Available at: <https://www.thegrocer.co.uk/top-products/e-cigarettes-top-products-2020/651415.article> (accessed 11/08/2022)

75 Eadie, D et al. *E-cigarette marketing in UK stores: an observational audit and retailers' views*. BMJ Open, September 2015. Available at: <https://bmjopen.bmj.com/content/5/9/e008547> (accessed 11/08/2022)

76 Tulley, C. *Vaping: 'I'm 17, and rarely ID'd for e-cigs'*. BBC News, October 2019. Available at: <https://www.bbc.co.uk/news/health-50045639> (accessed 11/08/2022)

77 Trading Standards South West. *Trading Standards checks on nicotine vape sales highlight problems*. Trading Standards South West, March 2022. Available at: <https://www.tssw.org.uk/trading-standards-checks-on-nicotine-vape-sales-highlight-problems/> (accessed 11/08/2022)

78 BCP Council. *Illegal vapes sold to underage teenagers*. BCP Council, March 2022 Available at: <https://www.bcpCouncil.gov.uk/news-article.aspx?title=illegal-vapes-sold-to-underage-teenagers> (accessed 11/08/2022)

79 Action on Smoking and Health. *Fears of growth in children vaping disposables backed up by new national survey*. ASH, July 2022. Available at: <https://ash.org.uk/media-and-news/press-releases-media-and-news/fears-of-growth-in-children-vaping-disposables-backed-up-by-new-national-survey/> (accessed 11/08/2022)

80 Doward, J. *Legal loophole allows children to get free vape samples*. The Guardian, October 2020. Available at <https://www.theguardian.com/society/2020/oct/25/legal-loophole-allows-children-to-get-free-vape-samples> (accessed 11/08/2022)

81 Action on Smoking and Health. *Delays in regulatory reform leave children exposed to e-cigarette promotion*. ASH, July 2021. Available at: <https://ash.org.uk/media-and-news/press-releases-media-and-news/delays-in-regulatory-reform-leave-children-exposed-to-e-cigarette-promotion/> (accessed 11/08/2022)

82 Khan, J Dr. *Making Smoking Obsolete Independent review into smokefree 2030 policies Dr Javed Khan OBE*. OHID, June 2022. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1081366/khan-review-making-smoking-obsolete.pdf (accessed 11/08/2022)

83 Greater Manchester Combined Authority. *E-cigarette swap to stop evaluation summary*. GMCA, 2020. Available at: https://www.gmhsc.org.uk/wp-content/uploads/2020/08/E-cig-Eval-Summary19_FINAL.pdf (accessed 11/08/2022)

providing this valuable service nor should it prevent specialist vape shops from responsibly distributing free samples to adult smokers; but it must tackle untargeted distribution which encourages use of an addictive substance amongst non-smokers and the young. It is another example where the regulation must walk a tightrope between encouraging smokers to switch, without encouraging others to start - particularly underage people.

5: FLAVOURS

From tobacco and mint to berry and vanilla, e-cigarette consumers have thousands of e-liquid flavour options to choose from, and there are currently no regulations restricting the flavours available to consumers in the UK. There is concern that this variety of flavours may encourage young non-smokers to take up vaping, with a study of English school children finding that flavoured e-cigarette adverts elicited greater interest in trying them than adverts for non-flavoured e-cigarettes⁸⁴. Because of the appeal of flavours to young people, the Khan review has called for a review of the way e-cigarette flavours are described and potentially a review of the flavours themselves.⁸⁵ However, research has also shown that restricting the variability of flavours may make adult smokers less likely to quit and increase their cravings for cigarettes. Another study found that e-cigarette flavours may have the benefit of making teen smokers more likely to switch.^{86, 87}

The appeal of flavours on young people should continue to be monitored and some restrictions of e-cigarette flavours may be necessary to limit this appeal. However, it seems likely that any heavy restrictions on flavoured e-cigarettes may do more harm than good by deterring adult smokers from switching. New Zealand has prohibited generic

retailers like supermarkets and service stations from selling e-cigarette flavours other than tobacco, mint and menthol while still allowing specialist vape retailers to sell other flavours - this could be a blueprint for UK regulations to follow.⁸⁸ Likewise, the Khan review's suggestion that the names and descriptions of e-cigarette flavours be made less appealing to young people is a compelling way in which the appeal of flavours can be reduced, without restricting adult smokers' access to different flavoured e-cigarettes.

6: PRICE

In the UK the costs of e-cigarette use is typically lower than that of tobacco use.

There is some concern that this comparative affordability might make e-cigarettes more accessible to non-smokers deterred by the price of tobacco, with countries like the US calling for higher taxes on e-cigarettes to deter young non-smokers.⁸⁹ However, research has shown that increasing taxes on e-cigarettes may encourage use of traditional cigarettes among adults rather than deterring young people from buying them.⁹⁰

At present VAT on e-cigarettes in the UK is set at 20%. This is lower than taxes on traditional cigarettes but higher than other alternative sources of nicotine - nicotine gum and patches have been taxed at 5% since 2008.⁹¹

In the UK people from what's labelled 'manual social classes' are more likely to smoke than those economically better off.⁹² In light of the evidence that raising taxes on e-cigarettes may encourage greater traditional cigarette use, the risk raising taxes on e-cigarettes presents to adult smokers' ability to switch, particularly those from poorer backgrounds, likely outweighs any potential benefits of stopping

84 Vasiljevic M, Petrescu DC, Marteau T M. *Impact of advertisements promoting candy-like flavoured e-cigarettes on appeal of tobacco smoking among children: an experimental study*. Tobacco Control 2016. Available at: <https://tobaccocontrol.bmj.com/content/25/e2/e107> (accessed 11/08/2022)

85 Khan, J Dr. *Making Smoking Obsolete Independent review into smokefree 2030 policies Dr Javed Khan OBE*. OHID, June 2022. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1081366/khan-review-making-smoking-obsolete.pdf (accessed 11/08/2022)

86 Farsalinos, K E et al. *Impact of Flavour Variability on Electronic Cigarette Use Experience: An Internet Survey*. International Journal of Environmental Research and Public Health, December 2013. Available at: <https://www.mdpi.com/1660-4601/10/12/7272> (accessed 11/08/2022)

87 University of East Anglia. *Flavoured Vapes Less Harmful to Youn People than Smoking and Could Help Teen Smokers Quit*. News Archive, November 2021: Available at: <https://www.uea.ac.uk/news/-/article/flavoured-vapes-less-harmful-to-young-people-than-smoking-and-could-help-teen-smokers-quit> (accessed 11/08/2022)

88 Library of Congress. *New Zealand: Bill to Regulate Vaping Introduced*. Library of Congress, March 2020. Available at: <https://www.loc.gov/item/global-legal-monitor/2020-03-12/new-zealand-bill-to-regulate-vaping-introduced/> (accessed 11/08/2022)

89 Warner, KE. *Build Back Better's e-cigarette tax will make people smoke more*. The Washington Post, November, 2021. Available at: <https://www.washingtonpost.com/outlook/2021/11/22/e-cigarettes-nicotine-tax-smoking-vaping-health/>

90 Saffer et al. *E-cigarettes and adult smoking: Evidence from Minnesota*. Journal of Risk and Uncertainty, July 2020. Available at: <https://link.springer.com/article/10.1007/s11166-020-09326-5> (accessed 11/08/2022)

91 *The Value Added Tax (Reduced Rate) (Smoking Cessation Products) Order 2008*. Available at: <https://www.legislation.gov.uk/ukxi/2008/1410/article/1/made> (accessed 11/08/2022)

92 Office for National Statistics. *Likelihood of smoking four times higher in England's most deprived areas than least deprived*. ONS, March 2018. Available at: <https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/drugusealcoholandsmoking/articles/likelihoodofsmokingfourtimeshigherinenglandsmostdeprivedareasthanleastdeprived/2018-03-14> (accessed 11/08/2022)

young non-smokers from vaping.^{93, 94}

7: CO-LOCATION OF VAPING AND OTHER POPULAR PRODUCTS

In some sweet shops in the UK, you can find vaping products on shelves alongside Twinkies and bubblegum, 'impulse buy' products associated with indulgence, and popular with children. Selling vaping products alongside such products means they are likely to be seen as desirable 'treats' rather than products designed to help you quit smoking, and buying and trying e-cigarettes may become more appealing to young non-smokers. Research shows that e-cigarette packaging with references to cartoon characters and 'candy' brands makes them more appealing to adolescents suggesting that associating e-cigarettes with products popular with children could make young non-smokers more likely to try vaping.

While it is illegal in the UK for retailers to sell vapes to anyone under the age of 18, there are no regulations on where these products should be placed in brick-and-mortar shops. There is a blueprint for regulation here - in 2021, public health legislation was introduced to prevent products high in fat, sugar and salt from being displayed in high traffic areas in shops - for example, within 2 metres of checkouts.⁹⁵ The effectiveness of this should be monitored by MRHA when it is implemented in October 2022.

It is unlikely that e-cigarettes being sold in sweet shops and alongside other products popular with children has any impact on their appeal to adults. Tighter regulations on exactly what kind of shops can sell e-cigarettes and where they are located on shop floors would likely be an effective way to limit the appeal of vaping to children, and the likelihood of impulse purchases by non-smokers, without compromising adult smokers' willingness to switch.

8: NON-COMPLIANT PRODUCTS

Large numbers of illicit e-cigarettes have been seized in shops across the UK. Illicit e-cigarettes include products with non-compliant levels of nicotine strength, inadequate health warnings, and tanks above the legal capacity.^{96, 97, 98} These products are often sold in bright 'cartoonish' packaging that enhances the appeal of e-cigarettes amongst young non-smokers.⁹⁹

In the UK, e-cigarette regulations state that tanks should have a capacity of no more than 2ml while nicotine strength should be no more than 20mg. Regulations dictate that there should also be health warnings on e-cigarette packaging clearly stating, in a bold large font size, that the product contains nicotine. Funding cuts for local authorities have meant that spending on Trading Standards, who have a duty to enforce these rules, has halved over the last decade.¹⁰⁰ ASH and Trading Standards have both called for more funding from the Government so the problem of non-compliant products on the market can be adequately dealt with.^{101, 102} Given that these regulations exist to mitigate the health risks e-cigarettes pose to all vapers, tougher enforcement should have no impact on the health benefits e-cigarettes bring to adult smokers while also helping to protect children.

93 Miller, J. *Study finds e-cigarette cartoon ads may increase young adults' likelihood of vaping*. USC News, June 2019. Available at: <https://news.usc.edu/158209/e-cigarette-ads-young-adult-vaping/> (accessed 11/08/2022)

94 Action on Smoking and Health. *Delays in regulatory reform leave children exposed to e-cigarette promotion*. ASH, July 2021. Available at: <https://ash.org.uk/media-and-news/press-releases-media-and-news/delays-in-regulatory-reform-leave-children-exposed-to-e-cigarette-promotion/> (accessed 11/08/2022)

95 Unless they're being displayed in an aisle unit - see <https://www.acs.org.uk/advice/hfss-regulations> for details.

96 BBC News, *Nottingham: Super-strength vaping products seized in crackdown*. BBC News, April 2022. Available at: <https://www.bbc.co.uk/news/uk-england-nottinghamshire-61039699> (accessed 11/08/2022)

97 Liverpool Express. *Warning to retailers over illegal e-cigarettes and vaping devices*. Liverpool Express, December 2021. Available at: <https://liverpoolexpress.co.uk/warning-to-retailers-over-illegal-e-cigarettes-and-vaping-devices/> (accessed 11/08/2022)

98 Elvin, S. *Warning issued after illegal disposable vapes seized from shops over health fears*. Metro, February 2022. Available at: <https://metro.co.uk/2022/02/02/warning-after-illegal-vapes-seized-from-shops-over-health-fears-16036500/> (accessed 11/08/2022)

99 ITV News. *Illegal vaping products 'aimed at children' seized in Middlesbrough crackdown*. ITV News, January 2022. Available at: <https://www.itv.com/news/tyne-tees/2022-01-04/illegal-vaping-products-aimed-at-children-seized-in-middlesbrough-crackdown> (accessed 11/08/2022)

100 Action on Smoking and Health. *Fears of growth in children vaping disposables backed up by new national survey*. ASH, July 2022. Available at: <https://ash.org.uk/media-and-news/press-releases-media-and-news/fears-of-growth-in-children-vaping-disposables-backed-up-by-new-national-survey/> (accessed 11/08/2022)

101 Action on Smoking and Health. *Fears of growth in children vaping disposables backed up by new national survey*. ASH, July 2022. Available at: <https://ash.org.uk/media-and-news/press-releases-media-and-news/fears-of-growth-in-children-vaping-disposables-backed-up-by-new-national-survey/> (accessed 11/08/2022)

102 MacGregor A. *NIP53 Review of business compliance conducted by Trading Standards Services in England*. Chartered Trading Standards Institute, April 2022. Available at: https://www.tradingstandards.uk/media/3177547/rr-nips_business_compliance.pdf (accessed 11/08/2022)

CONCLUSION

From underage sales to the existence of counterfeit products on the market, regulations are failing to encourage people to stop smoking, and falling short of protecting vapers and young non-smokers, putting the safety of vapers at risk and exposing young non-smokers to harm. There is a clear case for urgent and comprehensive changes in the current regulatory framework, and we have outlined priority areas for change.

Any changes to the current framework will need to balance competing public health priorities. If the UK is to become smoke free by 2030, and reduce health inequalities, we must avoid where possible deterring adult smokers from switching, or making e-cigarettes less accessible, particularly to people from lower socioeconomic backgrounds.

Achieving this needs a three pronged approach. Firstly, well-intended regulations need to be strengthened and better enforced. Secondly, gaps in the current framework, for example around branded imagery on packaging, should be filled through the introduction of new regulation. Finally, regulation likely to be posing a barrier to smokers transitioning to vaping, such as around where vaping products can be advertised, should be reviewed.

In the next stage of our work we will start to develop policy recommendations for how this should be delivered. Building on the insights we have identified here, areas for consideration include:

- Stronger age verification processes in brick and mortar shops and online marketplaces.
- Preventing e-cigarettes being displayed as 'impulse buy' products in shops
- A review of how advertising channels and targeted marketing can be used to tackle vaping misperceptions and encourage adult smokers to switch, without appealing to young non-smokers.
- Effective enforcement of the existing regulations prohibiting advertising towards young people. This includes a review of how Trading Standards

can be better funded to effectively enforce the regulations and the role the Online Safety Bill can play in tackling vaping related content for young people.

- A crackdown on the sale of counterfeit and non-compliant products.
- Closing the current loopholes that make it legal for free vape samples to be handed out to children.
- New regulation to make e-cigarette packaging less appealing to young people.
- Better protecting children from exposure to age-restricted products on social media

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