

Trading Standards Vapes Enforcement Update

This paper follows up the paper taken to the Joint Committee in May (at the end of this report, from page 6, as Annex A) and a discussion at the Board. The May paper is attached for reference as it gives the background to the concerns and issues with vapes. This paper is designed to update the Joint Committee on the latest position as there have been a number of developments.

National Position:

Following an announcement at the Conservative Party Conference, on the 12th October 2023 the government released a Consultation titled “Creating a smokefree generation and tackling youth vaping”. The consultation can be found in full here: [Creating a smokefree generation and tackling youth vaping - GOV.UK \(www.gov.uk\)](https://www.gov.uk/consult/consultation/creating-a-smokefree-generation-and-tackling-youth-vaping) There are three areas being consulted on:

1. Creating a smokefree generation: consulting on the smokefree generation policy and its scope.
2. Tackling youth vaping: consulting on several options to ensure we take the most appropriate and impactful steps, building on England’s analysis of the youth vaping call for evidence.
3. Enforcement: consulting on the proposal to introduce new powers for local authorities in England and Wales to issue fixed penalty notices to enforce age of sale legislation of tobacco products and vapes.

The Government consultation acknowledges data from Action on Smoking and Health (ASH) showing that the number of under 18’s vaping has tripled in the last 3 years, with over 20% of children now having tried vapes.

With regard to tackling youth vaping the consultation asks for feedback on numerous proposals, including:

- restricting flavours
- regulating point of sale displays
- regulating packaging and presentation
- considering restricting the supply and sale of disposable vapes
- whether regulations should extend to non-nicotine vapes
- taking action on the affordability of vapes

The balance for the policy makers that needs to be considered is maintaining the downwards trend of tobacco smoking in adults, whilst not introducing nicotine addiction to children through vaping. So for example the challenge in what flavours should be allowed in the future is to maintain flavours which would appeal to an adult more than a traditional cigarette whilst not having flavours that actively appeal to children.



Trading Standards will respond to the consultation and will liaise with colleagues in Public Health who will also be responding. However, if the Joint Committee have any views that they would like us to feed in on their behalf then we could do this, or individuals on the Joint Committee can respond themselves through the link above.

As part of this announcement, the Government announced a further £30m for vape enforcement, which will be split between Border Force, His Majesties Revenue and Customs (HMRC) and Local Authority Trading Standards Services. The split of this money has not been clarified. We believe this is because the enforcement required by the different organisations will depend on the policy decisions made after the consultation responses have been considered. For example if disposable vapes are banned, there is likely to be more enforcement required at the points of import (as vapes are largely an imported product) than if disposable vapes remain a legal product but need to be sold from behind a counter with no display but with a warning notice. As a result of these two scenarios, different levels of funding would be likely to go to Border Force and Trading Standards.

Prior to this recent announcement and issuing of the Consultation there had been several approaches to the Government over the summer on the issue of youth vaping, with the LGA¹ and the Royal College of Paediatrics and Child Health (RCPCH)² both calling for a ban on disposable vapes.

Other Countries are also considering banning disposable vapes and there is a concern that if the UK does not act swiftly and is behind other countries, we will see further swamping of vapes into our marketplace as happened when America banned some vapes.

The LGA FAQ's are helpful to understanding the position and make it clear that there is an understanding that banning disposable vapes will not eradicate all the problems associated with the product, with an expectation of the development of a black market that will still require enforcement.

The Chartered Trading Standards Institute (CTSI) and the Action on Smoking and Health (ASH) have also released a paper exploring the Policy options to tackle the issue of disposable (single use) vapes which is circulated alongside this paper.

The UK Vaping Industries Association proposed a licensing scheme for vape sellers: [UKVIA reinforces call for “get tough” measures to stem rising numbers of children vaping - UKVIA](#) although this doesn't seem to have gained any real traction and isn't consulted on as part of the current Government consultation.

Vapes continue to regularly make national media stories and headlines including these recently:

[Never start vaping, says 12-year-old girl with lung damage - BBC News](#)

[Nearly half a billion small tech items thrown away - BBC News](#)

[Vapes '95% safer' than cigarettes messaging backfired - BBC News](#)

[How dangerous is vaping - and why the concern over young vapers? - BBC News;](#)

[Five million vapes thrown away every week - research - BBC News](#)

[Teenage vaping: 'I'll have puffs as I'm falling asleep' - BBC News](#)

[Rise in young women vaping daily in the UK - BBC News](#)

[Disposable vapes: Councils call for total ban by 2024 - BBC News](#)

¹ [Disposable vapes FAQs | Local Government Association](#)

² [Ban disposable vapes to protect children - doctors - BBC News](#)

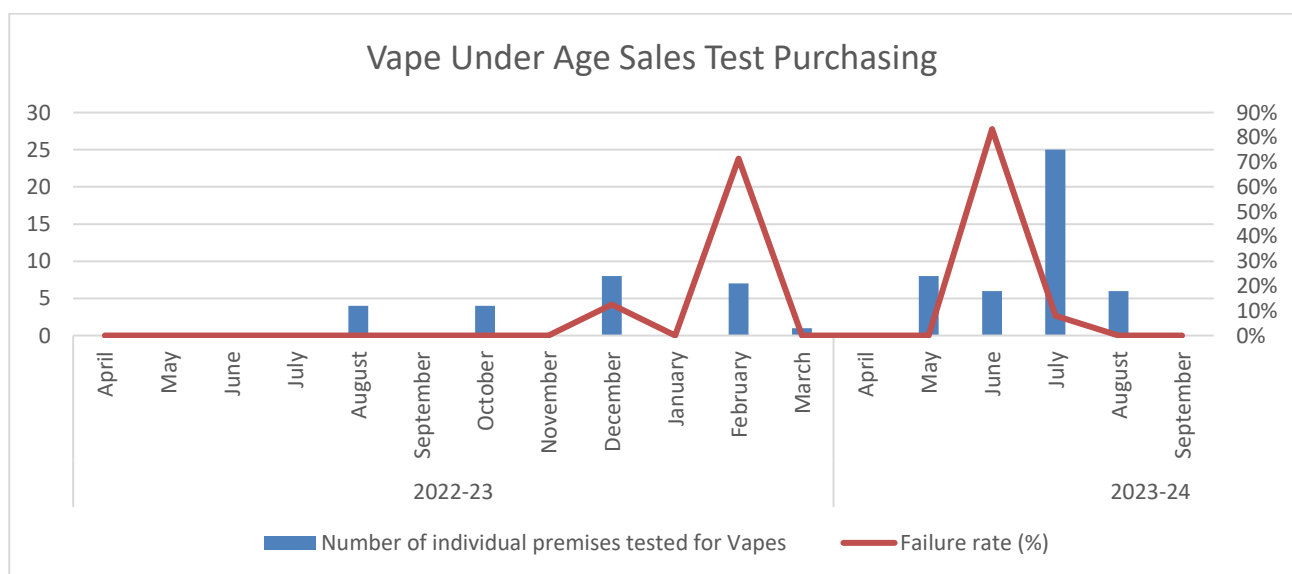
A proportion of a smaller amount of funding announced by central government in April (£3m nationally) is now available to the Service. We are currently making use of this for storage and disposal costs, and this is certainly helpful given the need for care in both areas to avoid fires and health risks of unknown chemical components of illegal vapes. There is a further element of funding that may become available to us, for enforcement related to vapes at the borders (i.e. Heathrow). However, there are significant operational and capacity challenges with this, and National Trading Standards is currently considering whether it is appropriate to set up the systems required whilst changes to policy (including whether to have an outright ban on disposable vapes) are under consultation as such changes in policy could significantly affect what enforcement is needed at the points of import.

Local Position:

Following the LGA call for disposable vapes to be banned, Buckinghamshire Council supported a similar motion at the end of September to also call for their ban. The detail can be found in the link below³.

Locally we received 214 complaints or pieces of information about illegal vapes and alleged underage sales of vapes from April 2022 to the end of March 2023. Since the beginning of April this year to the end of September we have received 154. These reports have been received from a mixture of residents and partner organisations such as the police. These numbers are starkly higher than any other area of our work including other age restricted products.

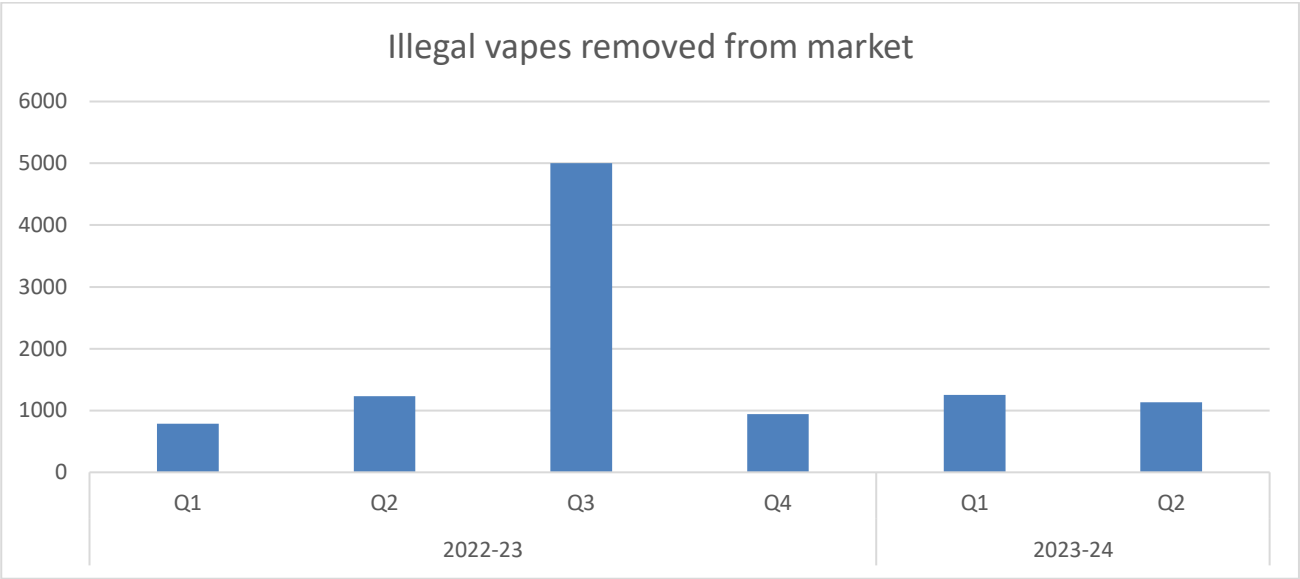
Consequently, the Service has been doing an increased amount of underage test purchasing of vapes. After significant difficulties getting under 18-year-old volunteers in Surrey, we were finally able to do test purchasing in Surrey in July, hence the spike. The failure rates vary quite wildly, but there is some correlation to high failure rates in areas where we also know we have illegal tobacco being sold by organised crime groups.



³ [Development Control Committee \(moderngov.co.uk\)](https://moderngov.co.uk/development-control-committee)

We are in the process of recruiting an underage sales officer in Buckinghamshire. The role is for a fixed term of two years and is funded by Buckinghamshire Council’s Public Health Team. Public Health colleagues in Surrey have not indicated any available funding for a similar role but we will keep it under discussion. The issues in Buckinghamshire are different in that the presence of organised criminal gangs operating the shops increases the investigation complexity, which is something we are not currently seeing in Surrey.

Due to the extreme levels of non-compliant vapes in the marketplace, difficulties in evidencing some of the non-compliance to a criminal standard and the wide array of different vapes being sold at each premises the Service is not usually proactively looking for illegal vapes. However, when we are in a shop for another purpose if we come across illegal vapes, we seek their removal from the marketplace. This might be the retailer voluntarily withdrawing them and signing them over to us for disposal or it may be that we seize them. During the recent action at Kempton Market, we did proactively look for them because of ongoing concerns about their sale and approximately 200 were seized.



In the last few months, we have sourced suitable storage facilities (the presence of batteries alongside unknown chemicals mean that our usual storage facilities are not appropriate) and are using an approved company to dispose of the vapes. Funding for the disposal (which is expensive due to the combination of batteries, chemicals and plastic) is now coming from the separate government funding. We are also assessing if it is feasible to set up our own volume testing facility to help with evidencing the non-compliance on tank size but because of the costs involved (approx. £4k) we are holding for a few weeks to see if the government moves ahead with the proposed ban which would negate the need for this testing.

We are working with schools in Surrey to get information to them (via the schools platform and Healthy Schools Initiative) and at every opportunity are asking for intelligence e.g. at

the Surrey Tobacco Alliance meetings and other meetings. We are establishing links with Healthy Schools in Buckinghamshire to understand how best to inform them.

We have shared information about issues with vapes and engaged with both local residents and partners at various events over the summer including the Buckinghamshire County Show, Illegal Tobacco Roadshows with Buckinghamshire Public Health which also carried information about vapes and the Surrey Combatting Drugs forum at the University of Surrey.



We continue to work with Primary Authority Partners who sell or produce vapes. Two partners of particular note are the Association of Convenience Stores (ACS) and the UK Vaping Industries Association (UKVIA). With the ACS we have ensured that the advice to their members about selling vapes (both from a safety perspective and considering they are an age restricted product) is up to date. Together we have published [a new guide on the subject](#). Attendance at conferences has also enabled us to physically show businesses how to check they are selling legal versions. With the UKVIA we are working with them to encourage an increase in compliance levels from their retailers, particularly in relation to underage sales. The implementation of third-party retail surveillance by UKVIA enables an assessment of levels of compliance and the development of a targeted response. Recently UKVIA changed their membership model to exclude all vape businesses linked to tobacco companies. We see this as a positive move and allows us a little more freedom in the depth of advice that we are prepared to go into with them. This is because the WHO resolution to stop tobacco companies influencing public policy meant that previously we needed to be very careful and limit our advice not engaging in some discussions or attending any events that could be perceived as linked to local authority policy. Of interest, the UKVIA have also recently(independently) released a new resource to help educate about recycling vapes .[Recycle Vapes \(recycle-vapes.co.uk\)](https://recycle-vapes.co.uk)

Below are some photos of two non-compliant (oversized) vapes (one also breaching Trade Marks legislation linking itself to Prime) a colourful child appealing bottle design with a cartoon character and an example of the array of vapes available in many shops.

