

EXPLANATORY MEMORANDUM TO
THE ENVIRONMENTAL PROTECTION (SINGLE USE VAPES) (ENGLAND)
REGULATIONS 2024

No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs (Defra) and is laid before Parliament by command of His Majesty.

2. Purpose of the instrument

- 2.1 This instrument is made through powers conferred through s. 140 of the Environmental Protection Act 1990 (“the 1990 Act”) and section 62(2) of the Regulatory Enforcement and Sanctions Act 2008 (“the 2008 Act”). It is designed to ban the supply and sale of disposable vapes in England to prevent pollution to the environment and harm to animal health.

3. Matters of special interest to Parliament

Matters of special interest to the [Joint Committee on Statutory Instruments OR the Select Committee on Statutory Instruments OR the Sifting Committees]

- 3.1 None

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

- 5.1 Statement to be confirmed ahead of laying the statutory instrument.

6. Legislative Context

- 6.1 Section 140 (1)(b) and (c), (3)(c) and (d) and (9) of the 1990 Act provides the Secretary of State with powers to implement regulation to prohibit or restrict the importation, use, supply or storage of injurious substances or articles for the purpose of preventing pollution to the environment or harm to human health. Section 140(9) of the 1990 Act gives powers to specify offences.
- 6.2 Section 62(2) of the 2008 Act provides powers to create an offence in relation to an enforcement authority where the enforcement authority is a regulator.
- 6.3 In consequence of the inclusion of civil sanctions, the instrument is subject to affirmative resolution in compliance with section 62(3) of the 2008 Act.

7. Policy background

What is being done and why?

- 7.1 The use of disposable vaping products (sometimes referred to as single-use vapes) has increased substantially in recent years. Disposable vapes are products that are not rechargeable, that are not refillable or that are neither rechargeable nor refillable. Products may contain vape liquid with or without nicotine.
- 7.2 There is growing concern over the environmental impacts of disposable vapes given their hard to recycle components and the increasing frequency in which these products are littered or thrown in the bin leading to harm to the environment and biodiversity.
- 7.3 On 12 October 2023, government published a consultation on proposals to create a smokefree generation and tackling youth vaping. The consultation included questions on proposals to restrict the sale and supply of disposable vapes due to the environmental harm as well as concerns about links to youth vaping.
- 7.4 On 29 January 2024 the government responded to the consultation and confirmed that legislation would be brought forward to ban the sale and supply of disposable vapes. It was also confirmed that Scotland and Wales would implement legislation. Northern Ireland is considering next steps following the consultation.
- 7.5 This legislation will prevent anyone from supplying disposable vapes in the course of a business, whether or not by way of sale (i.e. whether or not involving payment).
- 7.6 The legislation defines a disposable vape, as being those devices that are not rechargeable and not refillable. This means that to be considered reuseable, the product must be both rechargeable and refillable, not simply one or the other.
- 7.7 A vape is not considered rechargeable if it is designed to contain a battery that cannot be recharged by the user or a coil which cannot separately be purchased and is not intended to be replaced by an individual user in the normal course of use (whether the coil itself or as part of a cartridge or pod).
- 7.8 A vape is considered refillable if it has a single-use container that can be purchased separately and replaced or the container can be refilled. ‘Container’ is intended to mean the tank, pod, cartridge, capsule or any other receptacle that is designed to hold the vaping substance and be used with the vape.
- 7.9 The ban will be brought into force at least 6 months after the instrument has been introduced to ensure businesses have sufficient time to adapt and run-down stocks. The proposed coming into force date is 1 April 2025.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 None.

10. Consultation outcome

- 10.1 A consultation on the proposals to restrict the sale and supply of disposable vapes was published on 12 October 2023. Almost 28,000 responses were received.

- 10.2 The consultation response was published on 29 January 2024 and confirmed that 79.6% of respondents agreed that disposable vapes should be restricted and 69% of respondents agreed that restrictions should take the form of a ban. 59.5% of respondents also thought that at least 6 months transition time was appropriate.
- 10.3 Given the wide support for tackling disposable vapes, the consultation response confirmed that UK Government would proceed with a ban on the sale and supply of disposable vapes in England. It also confirmed that we would ensure a minimum of 6 months transition period to allow businesses time to adapt. The Scottish Government and Welsh Government will also legislate for a ban as soon as possible and the Northern Ireland Executive will consider next steps.
- 10.4 The Scottish Government has proposed comparable draft regulations with a coming into force date of 1 April 2025. The Welsh Government is considering also introducing legislation for implementation on this same date.
- 10.5 An import ban will be considered in future.
- 10.6 The full consultation response can be found here: [Creating a smokefree generation and tackling youth vaping consultation: government response - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/creating-a-smokefree-generation-and-tackling-youth-vaping-consultation-government-response)

11. Guidance

- 11.1 This instrument will be enforced by local authorities and their trading standards officers in accordance with future published guidance. The legislation provides for fixed monetary penalties, compliance notices and stop notices as well as non-compliance penalties. Criminal sanctions are also provided for where an enforcement undertaking has not been complied with.
- 11.2 Guidance will be published by local authorities in advance of this instrument entering into force. The guidance will assist manufacturers, suppliers, retailers and the public in understanding how to comply with these regulations. Defra intends to raise awareness of the new legislation by meeting representatives and providing an explanation to local authorities on what is included in the restrictions.

12. Impact

- 12.1 These regulations will impact retailers and manufacturers, including small businesses. A draft impact assessment has been published alongside the draft statutory instrument. A final impact assessment will be published and findings included in this explanatory memorandum once comments on the draft impact assessment have been considered.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), there will be a lead-in time of at least 6 months from when legislation is introduced.

14. Monitoring & review

- 14.1 Part 4 of this instrument includes requirements for review and confirms these regulations will be reviewed within 3 years from the date on which this instrument

comes into force, as required by section 67 of the Enforcement and Sanctions Act 2008. An independent evaluation of policy impacts will be carried out in future.

15. Contact

- 15.1 Suzanne Stafford at the Department for Environment, Food and Rural Affairs can be contacted with any queries regarding the instrument, Telephone: 07584 521 354 or email: Suzanne.stafford@defra.gov.uk.
- 15.2 Chris Preston, Deputy Director for Resources and Waste, at the Department for Environment, Food and Rural Affairs can confirm that this draft Explanatory Memorandum meets the required standard. An updated document will be provided before the final statutory instrument is laid in parliament.
- 15.3 Ministerial approval will be provided ahead of laying the statutory instrument.

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