

Ban on the sale and supply of disposable vapes in England

Lead department	Department for Environment, Food and Rural Affairs
Summary of proposal	The Department is introducing a ban on the sale of disposable vape products in England from April 2025.
Submission type	Impact assessment (IA) – 2 May 2024
Legislation type	Secondary legislation
Implementation date	TBC
Policy stage	Final
RPC reference	RPC-DEFRA-5331(2)
Opinion type	Formal
Date of issue	01 July 2024

RPC opinion

Rating¹	RPC opinion
Fit for purpose	The Department has identified and sought to quantify a good range of impacts linked to the ban on disposable vapes. The recent consultation and stakeholder engagement has been used to refine and update the quantitative analysis. An estimate of the impact upon small and micro businesses (SMBs) has been included, although a qualitative assessment of the broader impacts faced by SMBs would be welcomed. The rationale needs further strengthening, but the Department has significantly improved the monitoring and evaluation (M&E) plan since consultation.

¹ The RPC opinion rating is based only on the robustness of the EANDCB and quality of the SaMBA, as set out in the [Better Regulation Framework](#). RPC ratings are fit for purpose or not fit for purpose.

Business impact target assessment

	Department assessment	RPC validated
Classification	Qualifying regulatory provision (IN)	Qualifying regulatory provision (IN)
Equivalent annual net direct cost to business (EANDCB)	£1,851.6 million	£1,851.6million <i>(2019 prices, 2020 pv)</i>
Business impact target (BIT) score	£9,258 million	£9,258 million
Business net present value	-£12,705.8 million	
Overall net present value	-£12,627.1 million	

RPC summary

Category	Quality²	RPC comments
EANDCB	Green	The Department has made good use of the consultation to refine the evidence and assumptions to ensure that the impacts can be appropriately quantified. The IA now includes a much clearer discussion of the evidence that has informed the counterfactual against which costs are assessed; however, the IA should discuss in much greater detail the likely overlap between this policy and the duty on products containing nicotine.
Small and micro business assessment (SaMBA)	Green	The IA includes figures for the likely number of SMBs affected, with this almost exclusively being i retail and wholesale businesses. There is an attempt to apportion the share of total costs to these SMBs and the IA addresses why exemption is not possible. The IA would be improved from a discussion of the possible wider impact on those SMBs who will no longer be able to sell disposable vapes.
Rationale and options	Weak	The IA needs to provide stronger evidence and analysis for why intervention is necessary, based on the problems that have been identified. Whilst the Department has expanded its discussion of some of the alternative options, the argument made for ruling these out is not always clear.
Cost-benefit analysis	Satisfactory	The analysis to inform the quantified assessment builds on that produced prior to consultation and has been refined using evidence gathered from key affected stakeholders through consultation. However, the IA should provide some context to the stakeholders who provided that evidence, even if it is unable to identify them. The Department appropriately caveats various aspects of the analysis and has sought to undertake sensitivity analysis, where appropriate.
Wider impacts	Good	The Department has included a range of wider impacts within the IA and, while some have been expanded upon since consultation, the IA could still benefit from developing key ones further; for example, the discussion of innovation remains limited.
Monitoring and evaluation plan	Satisfactory	The IA includes a good level of discussion of the various forms of evaluation (e.g., process, impact and economic/value-for-money) that are planned for the policy. The Department has used a theory

² The RPC quality ratings are used to indicate the quality and robustness of the evidence used to support different analytical areas. The definitions of the RPC quality ratings can be accessed [here](#).

of change to help support the development of the M&E plan and the IA includes a clear commitment to undertaking a PIR. The IA would benefit from including a discussion of specific data sources and metrics.

Summary of proposal

The Department is proposing to introduce a ban on disposable vaping products. This is the latest initiative being considered by the Government in seeking to tackle issues relating to vapes. Unlike those policies recently proposed by DHSC as part of the Tobacco and Vapes Bill (aimed at reducing negative health outcomes due to vape use), this policy is focused on tackling concerns over the excess waste generated by the products in scope of the ban. There are three options shortlisted by the Department ahead of consultation:

- Option 0: Do-nothing;
- Option 1: A ban on the sale and supply of disposable vapes (the preferred option); and
- Option 2: an information campaign to increase the number of disposable vapes being recycled.

The main impacts identified by the Department are the loss of profit to businesses from a reduction in the sale of vape products over the appraisal period, familiarisation costs, the indirect costs associated with switching to alternatives and the range of impacts faced by local authorities arising from their enforcement of the legislation as well as their role in managing waste.

The Department's estimate of the EANDCB is £1,851.6 million and the net present social value (NPSV) is estimated to be -£12,627.1 million. The EANDCB has increased significantly since consultation, more than doubling from the previous estimate of £811.7 million, with the NPSV also seeing a substantial change from -£0.7 billion. This increase has primarily been driven by an updating of the assumed profit margin rates that different businesses throughout the vape supply chain make on the disposable vapes, based on stakeholder engagement through consultation. The RPC welcomes the use of stakeholder evidence to revise the EANDCB.

EANDCB

Identification and quantification of impacts

The Department has, as a result of consultation evidence to refine the assumptions, appropriately quantified the direct impacts. The size of the EANDCB has therefore increased significantly between consultation and final stage, with this being driven by a change in the assumed profit margin for retailers. The Department had previously assumed a disposable vape profit margins for retailers of approximately 24 per cent; this has been updated to 45 per cent following engagement with stakeholders. The IA also now monetises the profit loss for wholesalers and importers/re-branders.

The RPC notes that the number of retailers used in the analysis (49,291) is consistent with that used by DHSC in the IA supporting the Tobacco and Vapes Bill. Whilst this estimate appears to be supported by stakeholders (paragraphs 127-8), a high scenario involving 138,545 retailers to cover other possible unconventional routes (e.g. phone shops, pubs, nightclubs, hairdressers) for retail sales (table 10)

has been provided, noting that only a proportion of these would be expected to sell disposable vapes. The IA would have benefited from providing an estimate of how many of these businesses sell disposable vapes in the high scenario and presenting more clearly what the EANDCB would be under these assumptions given the uncertainties involved.

The IA touches on online sales – the Department assumes 200 online retailers (table 9, p37) as part of the 49,291 retailers included in the monetised analysis e.g. for the familiarisation costs in paragraph 150 - but should seek to expand on whether the monetised costs for this group would be expected to differ from other retailers.

The IA does not monetise the cost of disposing of any excess stock in expectation of the six-month transition period being an adequate period for retailers. However, there appears to be no discussion on the impact of excess stock for wholesalers. While the IA argues that a six-month transition is adequate based on about 59.5 per cent of consultation responses, it should seek to provide more information in relation to wholesalers and possibly importers.

Counterfactual/baseline

The IA now includes a much clearer discussion of the evidence that has informed the counterfactual against which costs are assessed; however, the IA should discuss in much greater detail the likely overlap between this policy and the duty on products containing nicotine.

SaMBA

Scope of impact upon SMBs

The Department explains that the SMBs likely to be affected by the policy are exclusively within the retail and wholesale sector, with no SMBs expected in the other sectors considered. A table setting out the number of SMBs across the various SIC codes is included, whilst the Department has made use of turnover/revenue data to apportion costs to SMBs. The IA would be improved by a discussion of the possible wider impact on SMBs beyond these sectors who may also sell disposable vapes to supplement their main business activity, such as but not limited to barbers, pubs and social clubs, who will no longer be able to sell disposable vapes, including the impact of footfall sales foregone.

Mitigation and exemption

The Department makes a clear case for why SMBs cannot be exempt from the regulations, with 97 per cent of retailers being SMBs and accounting for 69 per cent of total turnover of disposable vapes. In addition, the IA, whilst stating that except for tailored information no other mitigations will be provided, it does include a table addressing a range of possible mitigating actions that could be taken, with some discussion over the possible merit of each approach.

Rationale and options

Rationale

While the Department illustrates the scale of the issue, establishing the amount of disposable vapes that are not recycled and go to waste, it does not present clear evidence and analysis to support regulatory intervention. In paragraph 17, the Department states that an estimated 70% of vapes are thrown away as consumers were unaware that they could be recycled. The IA references current Waste Electrical and Electronic Equipment (WEEE) regulations which set out requirements for businesses to have in place facilities to recycle in-scope goods, of which vapes are part. In addition, the Department highlights that updates to these regulations are in progress to establish a more specific vape category with requirements for business. The Department also discusses how it is expected that consumers will naturally shift to reusable vapes, as a more long-term cost-effective option, which would naturally bring the rate of disposable use down. The Department must present stronger evidence and analysis for why regulatory intervention is necessary to deliver the policy objectives set out in the IA.

Stakeholder feedback to prior consultation (by DHSC in its wider tobacco and vapes consultation) is also cited in support of the policy being considered. However, the question put forward to consultees related specifically a restriction of the sale of disposable vapes (on health grounds), as opposed to an outright ban. The Department should seek to use stakeholder feedback to the upcoming WEEE consultation to strengthen the case for intervention. Given this tie-in to health-based government policies on vapes, the IA would be improved through a stronger consideration of the health-based arguments for intervention (as well as the related impacts in this area). The IA includes little reference to the feedback and support gathered on the policy (as opposed to the analysis) from its own recent consultation.

The IA also makes reference to other countries (such as New Zealand and Australia) who have introduced similar bans; however, the Department notes that these were to combat underage vaping. The IA should focus on international comparisons where policies sought to target excess waste from vapes (such as in France), including discussing the drivers behind regulatory intervention there.

Options

The RPC commends the Department for including an initial longlist of options considered, in addition to those shortlisted for consultation. However, the process through which the Department narrowed down these options needs to be better explained. The IA includes a table summarising the qualitative assessment against selection criteria linked to the policy objectives, but the IA lacks clarity over the specifics of this qualitative assessment. Given the recent announcement in the Spring Budget to introduce a tax on vaping products in 2026, the Department should provide further discussion as to why the taxation option has been discounted in this

instance, as well as further consideration of a possible deposit return scheme. With regards to taxation, the IA must provide a stronger case for why this is not a suitable option, particularly as if set at the correct rate it should making the recycled disposal vapes cheaper than the new ones and reduce the environmental impact of their improper disposal. Furthermore, taxation would also align with how the UK has handled other forms of plastic litter, such as single-use plastic shopping bags for instance. Additionally, whilst not the primary objective of policy, improving health outcomes through reducing usage could also be delivered through taxation, in a similar fashion to how cigarettes (a close substitute good) are taxed in this way.

In addition, the approach taken to identifying a short list of suitable options should follow the options framework-filter set out in the Green Book, including making use of the critical success factors identified there.

Furthermore, building on the point made above regarding the rationale for intervention, the IA should consider whether an option to restrict the sale of all vapes (disposable and re-usable) to specialised stores would be feasible, given those premises are already required by current regulations to have recycle facilities.

The Department has only provided analysis of the impact of the preferred option. The IA would be significantly improved if the Department were to provide an assessment of the impacts of the non-regulatory option.

Cost-benefit analysis

Evidence

The IA makes repeated reference to difficulty in establishing the size of the vape retail and wholesale sector, specifically the number of businesses operating within it. The Department has, at this time, chosen to assume that all of the businesses within wider retail, who would be able to sell disposable vapes, are in scope of the regulations. The RPC welcomes that the Department has made extensive use of the consultation and further engagement to improve the evidence base.

Assumptions, risk and sensitivity

In addition to further developing the evidence base, the Department has tested a number of key pre-consultation analytical assumptions with industry stakeholders, updating these to reflect new information where possible. This applies to the kept stock assumption for retailers; however, it is not clear on this point in relation to kept stock by wholesalers. The IA would benefit from discussing this aspect of kept stock.

The Department usefully acknowledges uncertainty throughout the assessment and has included sensitivity analysis where it is appropriate and possible to do so. While the IA generally emphasises stakeholder engagement and support for its estimates, it does not appear to do so at paragraph 141 for why a 50/50 split assumption is made between cartridge devices and refillable tank devices for the group of existing

disposable vape users who are assumed to switch to alternative products. While this impact is indirect and does not affect the EANDCB, it is an indirect business impact relating to the switching to other products and recouping the profit loss from the vapes and would affect the estimated NPSV. The Department should provide evidence to support this assumption.

The Department argues that although the proposal has a large negative NPSV, there are a wide range of other environmental and social benefits that accrue domestically that are not monetised within the IA. Although these benefits are described qualitatively, many would appear to have a relatively small impact e.g. reduced clean-up costs to local authorities and negative environmental externalities to soil and wildlife from littering. The IA would benefit from making a stronger argument for the extent to which these non-monetised benefits may partially offset the overall societal costs reported in the NPSV.

In the discussion of why a tax option is not feasible in delivering the policy objectives, the Department state that if the rate of tax were to be set too high, this will lead consumers to quit and return to using cigarettes. However, the IA does not similarly consider the possibility of consumers, in a response to now only being able to buy more expensive reusable vapes, making the switch back to using cigarettes as a cheaper alternative.

Wider impacts

Innovation

The IA includes a brief section covering innovation impacts, which should be strengthened. The Department should discuss the likelihood of whether vape, or other, manufacturers may seek to produce additional products that would be classed as neither disposable or reusable vapes under current definitions, to meet the current demand for cheap entry-level vaping products.

Competition

The Department has sought to address the competition checklist set out in the Competition and Market Authority's (CMA's) guidance. However, the Department should be aware that more recent guidance³ suggests additional considerations be made. The Department has also included some analysis earlier in the IA, looking at possible consumer switching behaviour in the event of the ban. The IA should develop this thinking further and look at the implications for market structure and dynamics.

International trade and investment

The IA notes that effectively all vape products sold in the UK are imported due to there being no domestic manufacture. The Department has also considered the impacts upon importing businesses as part of the general cost-benefit analysis. The

³ <https://www.gov.uk/government/publications/competition-impact-assessment-guidelines-for-policy-makers>

IA would be improved if there was consideration of whether this may lead to investment in the domestic production of reusable vapes.

The IA has not suitably discussed the possibility of illicit trade in disposable vapes occurring. Additionally, as the legislation will ban the sale and supply of disposable vapes, it would appear that bringing them into the country for personal use would not be prohibited. The Department needs to discuss what consideration has been given to the possible creation of an illicit market, which may be driven by consumers bringing disposable vapes back to the UK from overseas. The IA may wish to also consider the implications for the work carried out by Border Force officials if there were to be additional restrictions introduced for consumers bringing vapes into the country, similar to those placed on cigarettes.

Environment

With the consideration of the policy being driven by a desire to reduce the level of waste from the use of disposable vapes, the IA should discuss the potential broad reaching impacts on the environment of the policy. While the Department has included some discussion of the potential environmental benefits, the assessment would benefit from including more discussion on these impacts. The IA would also benefit from considering if a switch to alternatives may present additional environmental concerns. The IA would be further improved through considering in detail the linkage between improved rates of disposable vapes recycling and the sourcing of lithium, for example for the production of electric vehicles.

Regional impacts

While the Department notes that the expectation is for all devolved administrations to follow a common commencement date and align with England, the IA also states that there is the possibility of a gap. The IA only includes a limited assessment of what short-term regulatory misalignment would lead to and this would benefit from being discussed in more detail.

Monitoring and evaluation plan

The Department clearly states that this policy will be reviewed and that there is a statutory review clause setting the timeline for this to occur. The IA includes a brief overview of the process, impact and value-for-money evaluations that will be undertaken. While the IA includes a theory-of-change, which has been used to help shape the M&E plan to be followed, the IA would benefit from including a discussion of the specific data sources and metrics that will support the evaluation. Furthermore, where possible the Department should look to establish what would need to be seen in these metrics, to establish whether the policy has been successful.

Regulatory Policy Committee

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One Committee member did not participate in the scrutiny of this case to avoid a potential conflict of interest.