

Net Zero, Energy and Transport Committee: Environmental Protection (Single use Vapes) (Scotland) Regulations 2024 (*Single-Use Vape Ban*)

Sent by E-mail to: netzero.committee@parliament.scot

Link to legislation: <https://www.gov.scot/publications/the-environmental-protection-single-use-vapes-scotland-regulations-2024/>

8th August 2024

To whom it may concern,

**Net Zero, Energy and Transport Committee: Single-Use Vape Ban
Call for views**

The Scottish Grocers' Federation (SGF) is the leading trade association for the Scottish convenience store sector. There are 5,171 convenience stores in Scotland, which includes all the major symbol groups, co-ops and convenience multiples in Scotland. SGF promotes responsible community retailing and works with key stakeholders to encourage a greater understanding of the contribution convenience retailers make to Scotland's communities.

Being able to offer and advertise a diverse range of products is of paramount importance for local convenience stores. Modern convenience stores now offer a wide range of products and services, often at with limited financial incentive, from post office facilities, bill payment services and access to cash, to deli counters, coffee machines and collection lockers. A more restrictive range, not being able to provide easy access to the products that a customer wants or being unable to provide a 'good deal' on the 'full basket' of items customers intend to purchase, could encourage customers to search out harmful illicit products. Undermining many local businesses and the services they provide.

A typical convenience store offers a range of at least 17 kinds of different product categories. While they are ancillary to wider ranges of grocery and retail, vaping products are one of the product categories that some customers enter the shop to purchase. Combined, tobacco and e-cigarettes currently account for approximately 21.9% of the overall sales (UK wide).

SGF recognises the associated benefits that come from communities having access to a local convenience store. With over five thousand convenience stores in Scotland, employing over 49,000 people, and with 81% of independent retailers engaged in some form of community activity in the last year. Convenience stores have an increasingly important role in their local communities. As you will be aware, convenience stores are also recognised to have a significant local economic multiplier effect, creating employment and encouraging local growth in a variety of ways.

This is highlighted in our SGF Local Shop Report 2023, which shows that the sector has contributed over £10.6bn in Gross Value Added and over 9.1bn in taxes in the past year. (<https://www.sgfscot.co.uk/publications/sgf-scottish-local-shop-report-2023>)

However, many stores are facing an extremely challenging trading environment. As well as contending with their own pressures such as cost-of-living crisis, retailers are still trying to cope with higher-than-normal energy costs, high inflation and food inflation, higher interest rates, continued supply chain disruption and a substantial rise in retail crime. In addition, the burden of further regulation from government across a range of issues such as restrictions to HFSS products, MUP, potential alcohol marketing restrictions, waste/recycling/DRS/EPR changes, charges for single use items, and Business Rates, also impacts on small business viability.

SGF welcomes the opportunity to respond to the Committee review of the Environmental Protection (Single use Vapes) (Scotland) Regulations 2024.

Call for views (questions)

1. Do you agree that the supply and sale of single-use vapes in Scotland should be banned? If not, do you favour an alternative approach?

SGF promotes responsible retailing, and we support the objective of reducing use of Nicotine Vaping Products among younger people while protecting the natural environment from the impact of litter. Nonetheless, nicotine vaping products are a critical cessation aid for those who wish to quit smoking. However, they should never be marketed toward young people or people who do not smoke.

Likewise, we encourage compliance with the current Waste Electrical and Electronic Equipment (WEEE) regulations and recycling policy aimed at reducing waste and litter. SGF do this by sharing information and providing essential guidance with our members on complying to the WEEE legislation. Indeed, we have previously developed a Retailers Guide [<https://www.sgfscot.co.uk/publications/regulations-for-nicotine-vaping-products-and-tobacco-compliance-in-scotland>] ensuring full compliance with the regulations relating to the sale of tobacco and vapes in Scotland. SGF also launched a campaign in October 2023, with members, to provide 1,000 free vape recycling bins to convenience retailers in Scotland, which were delivered this spring. This is part of our campaign to support the acceleration of recycling points for used vapes in Scotland and builds on the significant progress that has already been made.

As such, SGF is of the view that if the measures that are currently in place had been sufficiently enforced, there would be no need for a ban on single-use vapes.

Nevertheless, in addition to the environmental concerns, evidence is now clear that too many young people are vaping. Hence, SGF has called for manufacturers and suppliers to rename and redesign the packaging of products to make them less appealing to children and young people, whilst not limiting their value as a cessation tool for adult smokers who wish to quit. We also note that leading companies have already reviewed and changed descriptors where there is a perceived appeal to children.

However, on balance, SGF disagrees with the proposal to place an outright ban on disposable vapes.

Balancing the dangers of vaping to young non-smokers against the clear benefits of vaping to adult smokers is an exceptionally difficult public policy issue. SGF's Healthier Choices, Healthier Communities [<https://www.sgfscot.co.uk/publications/healthier-choices-healthier-communities-reducing-harm-from-smoking>] campaign aims to send a clear message that if you smoke and wish to quit, then consider vaping, but if you don't smoke, don't vape.

It is our view that single use vapes (including a choice of flavours that adult smokers use) are too critical to smoking cessation to restrict. The ban disrupts more than 80% of the vape market in Scotland with little understanding of the impact on smokers who wish to use vapes to quit. Therefore, we disagree with the principle of the regulations and the implementation of a full ban on disposable vaping products, as set out in the Environmental Protection (Single-use Vapes) (Scotland) Regulations 2024.

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In addition, restrictions on disposable vapes will inevitably and significantly fuel illicit trade in cheap and unregulated products. Fuelling organised crime and harming the wellbeing of

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communities. This is already a major factor contributing to youth vaping and the environmental impact and we note that the current regulations are only enforced to a limited extent. We will cover this issue at length below.

2. Coming into force on 1 April 2025, the regulations ban the supply of single-use vapes in Scotland. What do you think about the timescale for implementing this ban?

Although the Scottish Government has set a date for the ban to come into effect of 1st April 2025, as an industry standard there should be a minimum implementation period of 12 months, after the required industry guidance has been published. Based on finalised regulations, and appropriate frameworks which have been established. This allows for unsold items to be processed through the supply chain, retailers to alter their stock and notify wholesalers and suppliers of their requirements, adjust store layout, amend digital payment software, change in-store notices and labelling, and raise public awareness/prepare customers regarding the changes.

Given it is not clear whether there will be adjustments to the potential inception date, to allow for a four nations implementation period, the timeframe is a critical concern for our members.

Similarly, it is not clear how this regulation will interact with policy and guidance across a number of regulatory areas, such as the Register of Tobacco and Nicotine Vapour Product Retailers. It may also contradict with established guidance for consumers across the UK. Such as advice provided by NHS England to use vaping products as a means of tobacco cessation (www.nhs.uk/live-well/quit-smoking/using-e-cigarettes-to-stop-smoking/).

In addition, we share our sector colleagues' concerns that the short period of consultation which was held earlier in the year, was not cohesive to good policy development and meaningful engagement with industry. Undermining the value and attention to detail of the responses received. Likewise, we noted the lack of a business impact assessment provided alongside the publication of the regulations. Confirming sector concerns that the Scottish Government, at the time, did not consider business views and the wellbeing of the Scottish economy to be a matter of consequence relating to this policy area.

The introduction of the ban should be preceded with clear and comprehensive compliance guidance for retailers and a full public awareness campaign. Setting out clearly the new obligations under the regulations, providing training and assistance where possible to support the changes needed in store, and highlighting the penalties for non-compliance.

3. A "single-use vape" - is any vape that is not refillable or rechargeable. Do you agree with this definition and are there any potential loopholes or unintended consequences?

SGF believes that there is still a need for greater clarity over the term "single-use vape". We understand that the ban is intended to target vapes that are thrown away after a single use (commonly known as 'disposables'), rather than those that are reusable (commonly known as 'closed system', 'closed pod' vapes or tank systems).

We interpret the regulations to mean that vapes (i) containing a battery that can be recharged, and which are (ii) compatible with separately available replaceable pod cartridges pre-filled with e-liquid containing a coil, are not "single-use vapes" within the meaning of the regulations. These are also commonly known as 'closed system' or 'closed pod' vapes. They are intended to be reused by the adult user of the product, who can recharge them when needed and replace the pod when required. They are not thrown away after a single use.

We think the regulations as drafted still have the potential to cause confusion for those responsible for enforcement. It is essential that the final definition of 'single-use' used in the legislation is watertight, in order to ensure complete clarity about which products are within scope of the ban and which items are fully compliant and can therefore be sold by retailers. Hence, the final definition should be agreed and understood by policy makers, enforcement agencies and industry alike.

Likewise, without a consistent, agreed definition across the four nations, there could be confusion for manufacturers, retailers and customers. Potentially harming access to compliant product for those who use vapes as a cessation aid.

4. The regulations establish two main offences with associated penalties. Do you think these penalties are proportionate?

SGF is content with the proposed offences and penalties outlined in the regulation, however we are concerned about the sufficient implementation of those measures.

To begin with, SGF believes that there must be a period of pragmatic grace provided to retailers making the change over to new stock. It is expected that there could be a significant volume of

non-compliant product within the UK supply chain, by 1st April. This is additionally confused by the various definitions such as NVPs, Nicotine Inhaling Products and Electronic Cigarettes set out in Scottish and UK legislation. Alongside over 35,000 products listed by the MHRA. Making it very difficult for retailers to understand that products supplied to them are fully compliant.

Given the lack of an implementation period, many well-meaning retailers will simply not have the capacity to ensure every product delivered by a supplier meets the new requirements. SGF will be working with members throughout the changeover period to ensure that retailers are fully compliant as early as possible.

However, SGF is not aware of any guidance being provided to retailers or suppliers from the Scottish Government to help ensure a successful transition.

In addition, as discussed in more detail below (Q5), there is an apparent lack of support for Trading Standards to enforce the new regulations. Potentially exacerbating illicit trade. It is also not clear what a ban on single-use will do to those irresponsible businesses that already sell vapes without age-restrictions. For instance, those businesses will seemingly continue to have access to these products in the absence of an import ban. It is also possible that the import vape market to continue to grow, although there is some chance those move to a 'dark market' in the coming years.

5. The enforcement powers granted to local authorities are extensive, allowing them to enter premises, take samples, and investigate suspected offences. What do you think of these powers both from the perspective of local authorities and businesses?

With approximately 222 restricted and age restricted products on the Scottish market, the vast majority of convenience retailers are very familiar and experienced with using measures to ensure compliance.

Convenience retailers have significant experience implementing robust measures to prevent underage sales. For example, using good practice, such as Challenge 25, and instore procedures such as a refusal register and till prompts. SGF also recently provided Challenge 25 posters and an example refusal register to stores across Scotland, which were distributed to approximately 8,000 subscribers of Scottish Local Retail magazine.

SGF has consistently worked alongside Trading Standards and authorities across Scotland, to ensure full and active compliance with the regulations on the sale of tobacco products and e-cigarettes. Our updated retailers guide Regulations for NVPs and Tobacco Compliance in Scotland, is a refresh of our previous version published in 2016, is widely distributed by Trading Standards offices across the country, ensuring retailers are familiar with and understand the key elements of the laws currently in force. (<https://www.sgfscot.co.uk/publications/regulations-for-nicotine-vaping-products-and-tobacco-compliance-in-scotland>)

Nonetheless, Trading Standards presently do not have the resources to properly enforce the current regulation and that has created the situation leading to the problems highlighted. As a result, compliant businesses that are meeting all their requirements being targeted for tighter restrictions even though they are already part of the ongoing solution.

SCOTSS and Police Scotland resources, powers and capacities are limited, and we have been informed that no additional financial capacity to manage the ban has been made available (for instance, from the £30million previously announced by the UK Government).

SGF is of the view that government and enforcement bodies must take a more proactive approach to clamping down on bad practice and repeat offenders. Ensuring that problem outlets are no longer able to sell these products, while responsible and compliant retailers remain free to trade within the rules. Likewise, manufacturers and wholesalers must ensure the products they are distributing to retailers are fully compliant with regulation.

6. What do you think about the enforceability of the Regulations; potential key challenges in this area; and whether lessons can be drawn from any comparable areas, such as the single-use plastics ban.

Please see our response to Question 5.

SGF is of the view that, under the current proposal and provisions as set out, there will be very little enforcement carried out. Due to the lack of resource for Trading Standards and Police Scotland to manage the ban.

This will inevitably increase the illicit market, help fund organised crime, undermine compliant local businesses and the services they provide, encourage bad practice and non-compliance, and ultimately harm the wellbeing of many Scottish communities.

7. The policy objectives aim to reduce environmental harm and encourage reusable alternatives. Are these regulations sufficient to meet these objectives and are any supportive measures needed, for example, around communication, or uptake of reusable alternatives.

As indicated above, a significant increase in illicit products will likely have an environmental impact. A lot of emphasis has been placed on the environmental impact but there has been little public communication aimed at educating vapers on returning their used vapes. This also applies to retailers and their provision of vape take-back which is also being stepped up under the reform of WEEE.

We are concerned that our members may still be expected to 'take-back' illegal vapes into their stores if required to provide in-store bins. This could be potentially dangerous, if products are unregulated, and could impact insurance premiums.

As discussed above, SGF launched a campaign in October 2023, with members, to provide 1,000 free vape recycling bins to convenience retailers in Scotland. This is part of our campaign to support the acceleration of recycling points for used vapes in Scotland and builds on the significant progress that has already been made.

However, once a ban is in place there will be no valid recycling options for the illicit goods coming into the country. Therefore, by definition, we would expect to see 100% of illicit items being disposed of incorrectly.

8. The Strategic Environmental Assessment says that the ban might result in an increased demand for illegally sold single-use vapes. What are the risks of increasing illegal sales of single-use vapes and how can those risks be mitigated?

Please see our responses to Questions 5 & 6.

According to studies carried out by colleagues in the convenience sector (ACS), the disposable vapes ban will lead to more customers (24% of current users of disposable vapes) moving to the already burgeoning illicit vape market, costing legitimate Scottish businesses £67m in lost sales

and millions more in the value associated with footfall loss, threatening the viability of some stores.

There may also be a minor increase or sustained level of tobacco sales, due to the vaping ban. Which is directly contradictory to Scottish Government plans to 'create a smoke free generation.'

9. Various impact assessments

[<https://www.legislation.gov.uk/sdsi/2024/9780111060315/resources>] have been completed by the Scottish Government. The Committee would welcome views on the financial, business, environmental, and equality impacts identified or other comments on the impact assessments.

As outlined in our introductory remarks, a typical convenience store offers a range of at least seventeen kinds of different product categories. While they are ancillary to wider ranges of grocery and retail, vaping products are one of the product categories that some customers enter the shop to purchase. Tobacco and e-cigarettes currently account for approximately 21.9% of the overall sales (UK wide).

From post office facilities, bill payment services and access to cash to deli counters, coffee and collection lockers, c-stores are designed to offer a wide range of services to their communities. A more restrictive range, not being able to provide ease of access to the products that a customer wants or being unable to provide a 'good deal' on the 'full basket' of items customers intend to purchase, could encourage customers to search out harmful illicit products and reduce both footfall and business viability. Potentially putting all these services at risk.

It is likely that local stores will see reductions in footfall as reusable products tend to provide more vape liquid. We may see increases in sales of reusable products, but this depends on Scottish Government's ability to tackle the illegal market that is increasingly present in Scotland.

Likewise, any loss in income must be either absorbed by the supply chain or passed onto customers. Which fuels the cost-of-living crisis and inflation. Due to the challenging economic circumstances of the past few years, there is very little room for businesses to absorb more costs. Meaning that prices must increase across a range of product areas just to keep businesses viable.

Depending on the dimensions and reductions in product areas, or changes to the range/supply of

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products, some space planning and reorganization may be required. In extreme cases, the cost of

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moving a shelving unit in a c-store can be approximately £13,000. Often with a two-year waiting list by specialist shop fitters.

Overall, some of our members are preparing for slightly reduced Stock Keeping Units (SKUs) but look to retain the size and accessibility of their range available to adult smokers.

10. The Regulations have been introduced following a UK consultation. Other UK countries are expected to introduce similar regulations. Do you have any views or concerns about alignment or cross-border implications?

As mentioned above, we support a UK wide approach to the regulation of nicotine vaping products. This ensures that Scottish businesses are not put at a competitive disadvantage to counterparts elsewhere in the UK.

Therefore, we are concerned about the potential for confusion and misalignment if the date of a ban is staggered across the four nations. Also causing a potential disruption if there is not a sufficient implementation period. Therefore, we would support a delay to the ban, in order to align and allow businesses to adequately prepare for the changeover coming into force.

Likewise, we are concerned by the potential for multiple legislative definitions of categories such as 'single-use vape', in the various regulations coming forward from each nation. This misalignment could create further compliance issues, as well as add to the administrative costs throughout the supply chain.

Disclosure:

SGF represents the entire Scottish convenience sector and many of our members sell either or both tobacco and/or nicotine vaping products. SGF also has corporate members that manufacture, produce and sell tobacco and nicotine vaping products for the UK and Scottish markets.

SGF welcomes the opportunity to respond to this call for views and hopes the Committee will find the information provided in this response useful.

Yours sincerely,

Jamie Mackie

Policy and Public Affairs Officer (Scottish Grocers Federation)



- SGF gives permission to the Net Zero, Energy and Transport Committee to publish its consultation response in full (organisation included) and to share this response internally as required.
- SGF is also content to be contacted again in the future, in relation to this consultation exercise.