EXPLANATORY MEMORANDUM TO

THE ENVIRONMENTAL PROTECTION (SINGLE-USE VAPES) (ENGLAND) REGULATIONS 2024

2024 No. 0000

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. Declaration

2.1 Mary Creagh CBE, Parliamentary Under-Secretary of State at the Department for Environment, Food and Rural Affairs, confirms that this Explanatory Memorandum meets the required standard.

2.2 James Cruddas, Circular Economy Strategy & Policy, at The Department for Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Suzanne Stafford at The Department for Environment, Food and Rural Affairs Telephone: 07584 521 354 or email: disposablevapes@defra.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 There is no legal definition of a single-use or disposable vape.

4.2 These regulations provide a definition for a single-use or disposable vape and make it illegal for a person to supply single-use vapes in the course of a business whether or not such supply involves the exchange of money. 'In the course of a business' could, by way of example, refer to supply carried out by a registered business or by an individual operating illegally.

4.3 The legislation defines a single-use vape as one that is not designed or intended to be re-used.

4.4 For a vape to be considered re-usable it must be both rechargeable and refillable (not simply one or the other).

4.5 A vape is not considered rechargeable if it is designed to contain a battery that cannot be recharged or if it has a coil that cannot be easily replaced. The coil may be part of a pod or cartridge where the pod or cartridge itself is replaced or the coil may be separate.

4.6 A vape is considered refillable if it has a single-use container that can be purchased separately and replaced (for example, pre-filled pods) or the container can be refilled.

4.7 It has been estimated that over 5 million single-use vapes are either littered or thrown away in general waste every week in the UK. These regulations are intended to reduce the number of vapes being incorrectly disposed of and lead to better environmental outcomes.

4.8 The instrument comes into force on 1 June 2025 to ensure businesses have sufficient time to adapt and run-down stocks.

Where does the legislation extend to, and apply?

4.9 The territorial extent of this instrument is England and Wales.

4.10 The territorial application of this instrument is England.

5. Policy Context

What is being done and why?

5.1 The use of single-use vaping products has increased substantially in recent years. According to industry research, over 360 million single-use vapes were placed on the market in the UK in 2023 and it was estimated that almost 5 million single-use vapes were either littered or thrown away in general waste every week in the UK[1].

5.2 There is growing concern over the environmental impacts of single-use vapes. They represent an inefficient use of critical resources, are difficult to recycle and are frequently disposed of incorrectly, being either littered or thrown in residual waste. When thrown in residual waste they can cause fires, risking harm to individuals and damaging waste infrastructure, and will often be incinerated. When littered they pose risks to biodiversity, soils and waterways. A report[2] published by Defra in January 2024 provides more information about the environmental concerns of single-use vapes.

5.3 The government is committed to reducing waste through developing a circular economy. There must be a shift from single-use items that use critical and valuable resources when alternative reusable items are available that help meet circular economy goals. A ban is the only way to make clear that single-use vapes are unnecessary, harmful to our environment and have no place in a circular economy.

5.4 It is anticipated that this legislation will support a reduction in the use of critical resources used to manufacture vapes, a reduction in the number of vapes being littered and an increase in vape components being recycled.

5.5 To support enforcement of the ban, this instrument introduces new offences – both civil and criminal – for a person supplying single-use vapes in the course of a business. Initial offences are civil and include stop notices, fixed penalty fines or compliance notices, or enforcement undertakings. Failure to comply with enforcement undertakings can lead to a criminal proceeding being brought against the individual. Failure to comply with other notices means an individual is guilty of an offence and could be liable for an unlimited fine or a prison sentence.

5.6 The ban will help reduce residual waste, support the statutory target of reducing municipal waste to landfill and support the goals of the government to prevent waste

[1] Disposable-vapes-impact-assessment.pdf (publishing.service.gov.uk) - https://assets.publishing.service.gov.uk/media/65eb1dac62ff489bab87b371/disposable-vapes-impact-assessment.pdf

[2] Analysis of the market for vapes: exploring the environmental impacts of single-use vapes - EV0157 (defra.gov.uk) - https://sciencesearch.defra.gov.uk/ProjectDetails?ProjectId=21447

through a circular economy. The legislation also supports implementation of the waste hierarchy by prioritising material re-use.

5.7 By preventing single-use vapes from becoming waste the ban aligns with the following Environmental Principles: Prevention Principle and Rectification at Source Principle.

What was the previous policy, how is this different?

5.8 The government is committed to reducing waste and transitioning to a circular economy. The Waste Hierarchy, as set out in The Waste (England and Wales) Regulations 2011, makes clear that the priority order for treatment of waste is to first reduce waste, to reuse materials and then to recycle. Disposal should always be a last resort. There has been growing use of single-use items, which do not support a circular economy given their 'take, make, waste' design. Linear business models are unsustainable and insecure. Given the growing prevalence of single-use vapes it is necessary to introduce legislation to ensure that vapes are pushed further up the hierarchy with more resources being first reused and then recycled.

6. Legislative and Legal Context

How has the law changed?

6.1 Prior to this ban coming into force there has been no legal distinction between a vape that is reuseable and one that is single use or disposable.

6.2 Vapes currently on the market must adhere to any relevant health regulations or waste regulations that apply to electrical equipment and batteries, this includes The Batteries and Accumulators (Placing on the Market) Regulations 2008 and related legislation.

6.3 Given the harm to the environment caused by the growing number of vapes and their incorrect disposal it is necessary to introduce legislation to prevent single-use vapes from coming to the market. While there were alternative policy options that were considered to reduce the prevalence of single-use vapes, a ban was considered the best option to address the environmental concerns and to deliver the desired policy aim. A ban sends an unequivocal message that these single-use devices are unsustainable and have no place in a circular economy and is in-line with other single-use bans that have been introduced.

Why was this approach taken to change the law?

6.4 There are no alternatives in which the law could have been changed to achieve the outcome of a ban on single-use vapes. The proposed legislation uses powers under the Environmental Protection Act 1990, which were the most appropriate to introduce this instrument and have similarly been used for the ban of other single-use items.

7. Consultation

Summary of consultation outcome and methodology

7.1 A UK-wide public consultation, Creating a Smokefree Generation and Tackling Youth Vaping, was published on 12 October 2023. The consultation set out proposals to create a smokefree generation, to tackle youth vaping and about the approach to enforcement. The consultation included proposals to restrict the sale and supply of single-use or disposable vapes due to environmental concerns. The consultation closed on 6 December 2023 and almost 28,000 responses were received.

7.2 The consultation response was published on 29 January 2024[3] and confirmed that 79.6% of respondents agreed that single-use 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.

7.3 The government is committed to taking action against these harmful products and recently confirmed an intention to proceed with the ban. The Scottish Government, Welsh Government and Northern Ireland Executive have also confirmed that a ban will be implemented.

8. Applicable Guidance

8.1 There is no statutory guidance associated with these regulations. However, guidance to support business will be provided from gov.uk before the legislation comes into force.

8.2 This instrument requires the regulator to publish guidance about its use of civil sanctions. This will be published on gov.uk prior to the legislation coming into force.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 These regulations will impact retailers, wholesalers and importers, including small businesses.

9.2 The estimated net cost to business per year is £1, 851.6m. The largest estimated monetised cost is profit loss to retailers, of which there are estimated to be approximately 50,000 in England. Stakeholders stated that large profits were made from selling single-use vapes and stated they had profit margins ranging from between 40 – 50%.

9.3 Retailers could expect a proportion of lost profit from single-use vapes to be recouped from sales of reusable vapes and refill liquid/cartridges. The impact assessment estimates 51% of existing users of disposable vapes will switch to alternative vaping products.

9.4 A full Impact Assessments (IA) has been published alongside this Explanatory Memorandum.

Impact on businesses, charities and voluntary bodies

9.5 There will be a significant impact on businesses, including small or micro businesses as outlined above. This is because small businesses are those that are most likely to sell single-use vapes. Guidance will be provided to support businesses to be compliant with regulations and shift to reusable products.

9.6 There is no anticipated impact from this instrument on charities or voluntary bodies.

9.7 There will be an impact on the public sector as local authorities are regulators and therefore responsible for enforcement of these regulations. Funding will be provided to support enforcement.

[3] 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/outcome/creating-a-smokefree-generation-and-tackling-youth-vaping-consultation-government-response#restricting-the-supply-and-sale-of-disposable-vaping-products

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 These regulations will be subject to regular review. Obligations are set-out in regulation 14 and include (i) a review of the operation of the provisions in Part 3 (Enforcement and Civil Sanctions) and the Schedule within 3 years from the date these Regulations come into force, as required by section 67 of the Regulatory Enforcement and Sanctions Act 2008 and (ii) a review of the regulatory provisions (including Part 3 and the Schedule) at least every 5 years from the date the Regulations come into force, as required by the Small Business, Enterprise and Employment Act 2015. The conclusions of such reviews are to be published.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 Mary Creagh CBE, Parliamentary Under-Secretary of State, has made the following statement regarding Human Rights:

"In my view the provisions of the Environmental Protection (Single-use Vapes) (England) Regulations 2024 are compatible with the Convention rights.".

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").