POLICY NOTE

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

SSI 2024/XXX

The above instrument was made in exercise of the powers conferred by sections 140(1)(b) and (c), (3)(c) and (d) and (9) of the Environmental Protection Act 1990. The instrument is subject to affirmative procedure.

Summary Box

This instrument will prohibit the sale and supply of single use vapes in the course of business, meeting a government commitment to tackle the environmental impact of single-use vapes.

Policy Objectives

The Scottish Government is committed to tackling the environmental impact of single-use vapes, as set out in the 2023/24 Programme for Government.

The policy commitment is also closely linked with the Tobacco and Vaping Framework, which recognises the rapidly changing landscape in Scotland, especially around the rise in popularity of vapes, where there should be a joint focus on the harmful effects of tobacco and vapes. Although a ban on sale and supply is progressing through environmental regulations it is consistent and complementary to the wider strategic health focus contained with the Framework, which includes working across the UK on policy interventions, where possible.

Following a four nations consultation from October to December 2023, the Scottish Government confirmed in January 2024 that it would ban the sale and supply of single-use vapes in the course of business in Scotland from 01 April 2025.

Banning the supply of single-use vapes in the course of business will achieve the policy aims of:

- accelerating a reduction in environmental harm by reducing the number of vapes being landfilled, incinerated, and littered, thereby increasing recycling and reuse rates, and
- stimulating businesses and consumers to replace single-use vapes with reusable alternatives, thereby supporting a switch to less environmentally harmful products.

To achieve the policy aims associated with this intervention, these regulations;

- Make it an offence for a person to supply, offer to supply or have in their possession for supply, in the course of business, single-use vapes (Regulation 4)
- Enable local authorities to authorise enforcement officers for the purpose of determining whether or not an offence has been or is being committed (Regulation 8)
- Provide for enforcement powers to carry out necessary investigations to determine whether an offence has been or is being committed (Regulation 9)

EU Alignment Consideration

No EU directive banning the sale or supply of single-use vapes currently exists, meaning there are no EU alignment consequences as a result of this instrument. Interventions by individual EU member states, with the sale of disposable e-cigarettes banned in Belgium from 1 January 2025, indicate no detrimental impact as a result of this instrument on the Scottish Government's policy to maintain alignment with the EU where possible and meaningful to do so.

Consultation

We have gathered views on our approach to this legislation through the consultation on Creating a smokefree generation and tackling youth vaping which ran from October to December 2023. The four-nation consultation received 27,921 genuine responses, of which 896 were from organisations, and 27,025 from individuals in both personal and professional capacities. The four-nation response to this consultation was published on 12 February 2024.

The draft Regulations were consulted upon between 23 February 2024 to 8 March 2024 . The consultation was publicly available on Citizen Space and advertised through Government media channels. We also contacted every retailer listed on the Scottish Register of Tobacco and Nicotine Vapour Product Retailers to seek their feedback on the consultation. The consultation received 86 online responses. The majority of comments focused on the definition of a single-use vape, the definition of supply, and enforcement powers. Following that consultation we made updates to the definition of a single-use vape and enforcement powers.

Regulations were notified to the World Trade Organisation (WTO) on 2 April 2024 under the Technical Barrier to Trade (TBT) agreement for comment from member states. Regulations were open to comment for a total of 60 days. We received no comments from member states on the notification.

We held a further six-week consultation from 2 April 2024 to 14 May 2024 on the implementation of the Regulations and draft impact assessments, including a Strategic Environmental Assessment. The consultation was publicly available on Citizen Space and advertised through Government media channels. The consultation received 45 responses. Engagement with industry utilising the Scottish Firms Impact Test process was also conducted to inform the Business and Regulatory Impact Assessment. Interviews held with 11 businesses and representative organisations on how the proposed measures would impact them identified themes relating to funding for enforcement and potential for illicit sales. Feedback has informed the Impact Assessments published alongside these Regulations and will inform our implementation and enforcement approach.

All public engagement and reporting has been completed in compliance with article 5.3 of the World Health Organization's Framework Convention on Tobacco Control (FCTC) which obliges the Scottish Government to protect the development of public health policy and tobacco control generally from the vested interests of the tobacco industry.

The Regulatory Review Group wrote to Scottish Government on 3 April 2024 setting out their assessment of the proposed ban on single-use vapes. This held that the implementation date was 'reasonable for businesses to adjust', subject to conditions such as alignment on

commencement date across other nations and a clear communication strategy ahead of implementation.

Officials have also engaged with The Society of Chief Officers of Trading Standards in Scotland (SCOTSS) and The Convention of Scottish Local Authorities (COSLA) to aid anticipating requirements and resourcing implications resulting from this policy.

Impact Assessments

The following impact assessments have been completed to evaluate the likely impacts of the policy.

- A Partial Business and Regulatory Impact Assessment was published on 2 April 2024. A Final Business and Regulatory Impact Assessment (BRIA) has been completed following consultation feedback and will be published to coincide with the laying of the Regulations.
- A Strategic Environmental Assessment environmental report was published for consultation on 2 April 2024.
- An Equality Impact Assessment (EQIA) was published on 2 April 2024. Following consultation, a final EQIA will be published to coincide with the laying of the regulations.
- A Fairer Scotland Duty Assessment (FSDA) was published on 2 April 2024. Following consultation, a final FSDA will be published to coincide with the laying of the Regulations.
- An Island Communities Impact Screening Assessment (ICIA) was published on 2 April 2024. Following consultation, a final ICIA will be published to coincide with the laying of the Regulations.
- A Child Rights and Wellbeing Impact Assessment (CRWIA) was published on 2 April 2024. Following consultation, a final CRWIA will be published to coincide with the laying of the regulations.

Impact assessments have collectively informed the design of the Regulations. The impact assessments have also informed associated policy development, such as consideration for options available to ensure an appropriate approach for enforcement and support for people in institutional settings such as prisons or care settings.

Financial Effects

A Final Business and Regulatory Impact Assessment (BRIA) has been completed for this policy and will be published alongside Regulations.

The impact of this policy on business in 10-year Net Present Value (NPV) in £millions (2023 prices, 2025 present value) is estimated at –2373.5 (worst case), -1624.5 (central), or –707.1 (best case). The loss of profits experienced along the supply chain as a result of the ban on single-use vapes is the primary reason the final NPV is negative. As with any policy, there will be differential positive and negative financial effects on different businesses, organisation and local authorities as a result of its implementation. This is explored in more detail in the BRIA.

A ban on the sale and supply, in the course of business, of single-use vapes remains the preferred policy option due to the non-monetised factors excluded from the NPV estimates, that can only be analysed qualitatively. A ban on the sale and supply of single-use vapes in the course of business will significantly reduce the environmental and social costs caused associated with their production and incorrect disposal. No alternative policy option was identified that was considered could effectively address the policy intent.

Scottish Government
Environment and Forestry Directorate

June 2024