



Chartered Trading  
Standards Institute

*About you*

*In what capacity are you responding to this survey?*

- *An individual sharing my personal views and experiences*
- *An individual sharing my professional views*
- ***On behalf of an organisation***

*Do you have any direct or indirect links to, or receive funding from, the tobacco industry?*

- *Yes*
- ***No***

*What is the main area of focus of your work?*

- *Academic*
- *Advocacy*
- *Distribution*
- *Education*
- *Emergency services*
- ***Enforcement agencies***
- *Healthcare*
- *Justice system*
- *Legal*
- ***Local government***
- *National government*
- *Production or manufacturing*
- *Retail*
- *Social care*
- *Wholesale*
- *England*

*Questions for organisations and those sharing their professional views*

*Do you work for, or are you providing views on behalf of, any of the following?*

Select all that apply.

- *Manufacturer or producer of a tobacco product*
- *Manufacturer or producer of a vape or nicotine product*
- *Importer of a tobacco product*
- *Importer of a vape or nicotine product*
- *Distributor of a tobacco product*
- *Distributor of a vape or nicotine product*
- *Retailer of a tobacco product*
- *Retailer of a vape or nicotine product*
- **None of the above**

Where does your organisation operate or provide services? (Optional)

Select all that apply.

- *England*
- *Wales*
- *Scotland*
- *Northern Ireland*
- **The whole of the UK**
- *Outside the UK*
- *Online*

What is the name of your organisation? (Optional)

**Chartered Trading Standards Institute Tobacco Expert Panel and Vaping Expert Panel. As all representatives on both panels have been selected by their regional or national groups to represent all LA Trading Standards Services within that region or nation, this response refers to "Trading Standards" views throughout**

*Vape and nicotine flavours and ingredients*

*We are seeking evidence on ingredients and substances within vaping and nicotine products. We are particularly interested in evidence on:*

- *ingredients used to create flavours (and emissions from these ingredients)*
- *the presence of heavy metals*
- *nicotine limits*

*Do you have evidence to provide on flavours, ingredients and substances, nicotine limits or heavy metals within vaping and nicotine products?*

- **Yes**
- *No*

If you select 'no' you will go straight to the next section of the call for evidence on tobacco flavours and accessories.

#### *Flavours in vapes and nicotine products*

*Please provide evidence on how vape flavours are currently created. For example, the number of different substances typically used to create a flavour or the strength of such substances. (Optional, maximum 500 words)*

*Please provide evidence of any flavours, ingredients or substances within vapes or nicotine products that could pose health risks and that we should consider when developing regulations. For example, risks associated with regulators, binders and sweeteners. (Optional, maximum 500 words)*

*Please provide evidence on what gives vape liquid a colour, and what risks there might be by restricting vape liquid to a clear colour. (Optional, maximum 500 words)*

*Please provide evidence of effective strategies and methods to limit the flavours in vapes and nicotine products. (Optional, maximum 500 words)*

**Our key request from an enforcement viewpoint is that flavours in vapes and nicotine products can be assessed from labelling alone rather than testing – any restriction which requires opening the product or testing restricts our ability to enforce.**

*Please provide evidence on the presence of heavy metals in vape liquids and nicotine products and any associated risks. (Optional, maximum 500 words)*

**Information below is taken from an Operation Joseph market surveillance report which looked at notified nominally compliant disposable vapes readily available on the market – 15 samples were tested for metals**

**Aluminium was found in 12/ 15 samples:**

**In all but 2 cases the amount was less than 13µg/g (micrograms per gram) which is below the Limit of Quantification (LoQ) but above the Limit of Detection (LoD) of 7.8µg/g.**

**2 samples exceeded that with 13.18µg/g and 24.32/<13µg/g (2 items tested where metal found).**

**Iron was found in 11/ 15 samples**

**In 4 cases this was less than the Limit of Quantification (LoQ)(<2.27µg/g).**

**In 7 cases this was above the LoQ with levels ranging from 2.40µg/g to 5.71µg/g.**

**Lead was found in 5/ 15 samples**

**In 3 cases this was less than the Limit of Quantification (LoQ)(<1.6µg/g).**

**In 2 cases levels were more significant at 5.06/4.86µg/g and 9.82/8.47µg/g (2 items tested where metal found).**

**Nickel was found in 1/ 15 sample**

**Only 1 sample was found with a Nickel level over the LoD of 0.23µg/g. Nickel was reported as being detected at lower levels in 3 samples (0.05-0.08µg/g) but this is below the stated Limit of Detection.**

**With no prescribed statutory limits, this is an area of uncertainty. The two samples with the highest lead level would be higher than internal test house guidance. Also note that a small adjustment of approximately +10% to be made for density of e-liquids as test reporting is per gram not per millilitre as the internal guidance limits refer to. (i.e. a 5.0µg/g level would equate to 5.5µg/ml for an e-liquid with a typical density, as found in these tests)**

This internal guidance is based on ICH Q3D (the International Council for Harmonisation of Technical Requirements for Pharmaceuticals, Guideline for Elemental Impurities) and the AFNOR Committee on Electronic Cigarettes and E-Liquids, XP D 90-300.

From their guidelines, the limits the test house has recommended for the heavy metals concerned are:

- Nickel (5 µg/ml)
- Lead (5 µg/ml).

We have no such guidance for Aluminium or Iron levels. Advice from the test house used is that there are currently no established safe limits for Aluminium or Iron for inhalation, and neither of them are mentioned in the ICH Q3D as a toxicological concern. There are occupational safety limits established for workplace exposure for aluminium and iron by the Occupational Safety and Health Administration (OSHA) but further expertise would be needed to translate this

Note these results apply to nominally legitimate products. It is highly likely that illegal vapes contain heavy metals and once levels are established we would also recommend that clarity is provided for testing methods so that if appropriate Trading Standards can take enforcement action

#### *Nicotine*

*We are seeking to better understand the nicotine content and absorption rates in nicotine products, such as nicotine pouches, including the risks and benefits which may occur at specific strengths.*

*Please provide evidence on how nicotine or other substances in nicotine products are absorbed by the user. You may wish to consider the risks and benefits of the amount of nicotine absorbed and the speed at which it is absorbed. (Optional, maximum 500 words)*

The COT paper (TOX-2019-38 E(N)NDS tox review of nicotine), describes the entire mechanism of how nicotine is absorbed:

Absorption of nicotine across biological membranes is pH dependent. Nicotine is a weak base with pKa 8.0 and is not well absorbed in the ionised state, in acidic conditions. Absorption in the mouth is thus dependent on the pH of the smoke or aerosol inhaled. Nicotine is quickly absorbed in the small airways and alveoli where the pH of lung fluid is 7.4, leading to a rapid rise in blood concentrations and delivery to the brain within 10–20 s of inhalation.

Absorbed nicotine is distributed extensively to body tissues, with the highest affinity to liver, kidney, spleen, and lung, and lowest affinity in adipose tissue. Nicotine has high affinity for brain tissue. Nicotine accumulates in gastric juice, saliva, breast milk, crosses the placental barrier, and accumulates in fetal serum and amniotic fluid. Nicotine arterial blood concentrations after smoking one CC are reported to range generally between 20–60 ng/mL, with an arterial/venous ratio around 2.3–2.8. Levels fall rapidly during 20 min after smoking.

Approximately 70-80% of nicotine is metabolised to cotinine, of which 90% is mediated by hepatic cytochrome P450 (CYP) 2A6 enzyme. Cotinine is then metabolised exclusively by CYP2A6 to 3'-hydroxycotinine. Nicotine and metabolites are excreted in the urine. The nicotine metabolite ratio (NMR), 3'-hydroxycotinine: cotinine, is an indicator of CYP2A6 nicotine clearance.

**Nicotine clearance is dependent on hepatic blood flow and thus increases with eating. Clearance decreases with older age, is generally higher in women than men, and is increased by oral contraceptive use and in pregnancy. Nicotine metabolism is diminished in neonates, with a half-life of three- to four-fold that in adults.**

*Please provide evidence or information on the impacts on businesses from having to adjust manufacturing or operating practices to meet new regulatory changes, such as those set out in this section of the call for evidence document. (Optional, maximum 500 words)*

*Please provide evidence on whether the limits on nicotine levels in nicotine vapes should be re-assessed, or if the current maximum limit of 20mg per ml is sufficient. (Optional, maximum 500 words)*

**The current maximum of 20mg/ml was designed to minimise the risk of harm based on accidental swallowing while at the same time replicating the amount of nicotine consumed by an average smoker over a day. Market surveillance tests conducted under Operation Joseph found just 2.5% of products tested contained more than 20 mg of nicotine per ml so compliance was generally good. If there is an increase in the amount of nicotine per ml, there may need to be a consideration of the appropriate classification (as nicotine is a hazardous chemical, it must be classified, labelled and packaged according to the CLP Regulation (EC) No. 1272/2008. Nicotine has a harmonized classification as acutely toxic (category 2) by oral, dermal, and inhalation exposure and has hazard statements H300: fatal if swallowed, H310: fatal in contact with skin, and H330: fatal if inhaled).**

**Previously nicotine juices were available in a range of strengths and it was suggested that users could gradually decrease strength as a means to reduce nicotine dependence. The advent of 'disposable' vapes saw almost all vapes provided at the maximum legal strength of 20mg/ml. It is therefore conceivable any increase in the limit will be applied across the board and potentially lead to increased dependence on nicotine**

*If you have any other evidence on flavours, ingredients or emissions for vaping products and nicotine products, please include it here. For example, you may wish to consider the risks to oral health when using nicotine pouches. (Optional, maximum 500 words)*

*Tobacco flavours and accessories*

*We are seeking evidence to better understand the impact that flavoured tobacco products and accessories have on tobacco consumption. We are also seeking evidence on whether introducing or amending legislation is necessary.*

*Do you have evidence to provide on tobacco flavourings or tobacco accessories?*

- **Yes**
- No

*If you select 'no' you will go straight to the next section of the call for evidence on vapes.*

*Please provide evidence on the effectiveness of banning characterising flavours for cigarettes and hand-rolled tobacco on reducing tobacco consumption. (Optional, maximum 500 words)*

**Trading Standards would highlight the difficulty of enforcement for characterising flavours and point out the blatant disregard of the menthol ban by tobacco companies.**

[Japan Tobacco International Making a Mint by Circumventing Menthol Cigarette Ban | OCCRP](#)

**In addition, we would note that menthol cigarillos appear to be more widely available than before the ban on menthol in cigarettes and hand rolling tobacco which may be a way of circumventing the ban**

*Please provide evidence on the use of ingredients that give cigarettes or hand-rolled tobacco a particular flavour or sensation. (Optional, maximum 500 words)*

*Please provide evidence on how the use of flavours for other tobacco products (such as heated tobacco, shisha or chewing tobacco) impacts tobacco consumption. (Optional, maximum 500 words)*

*Please provide evidence on the use of ingredients that give other tobacco products (such as heated tobacco, shisha or chewing tobacco) a particular flavour or sensation. (Optional, maximum 500 words)*

*Please provide evidence on how the use of flavoured tobacco accessories (for example crush balls and flavoured filters) impacts tobacco consumption. (Optional, maximum 500 words)*

*Please provide evidence or information on the impacts on businesses from having to adjust manufacturing or operating practices to meet new regulatory changes, such as those set out in this section of the call for evidence document. (Optional, maximum 500 words)*

*If you have any other evidence on tobacco flavours or flavoured accessories, please include it here. (Optional, maximum 500 words)*

## Vapes

*We are seeking to limit features of vapes to reduce the appeal to children and young people. In particular, we are interested in:*

- the role that a device's size and shape plays in the appeal of vaping to young audiences*
- the role that digital screens should have in vapes*
- the effectiveness of child resistant measures on vapes*

*Do you have evidence to provide on vapes?*

- Yes**
- No

*If you select 'no' you will go straight to the next section of the call for evidence on heated tobacco devices.*

## Size and shape

*We are interested in any evidence relating to the size and shape of vapes, including:*

- how different vape sizes and/or shapes appeal to young people*

- *the potential benefits of introducing maximum or minimum size limits*
- *the potential benefits of standardising size and/or shapes*

*If you have any evidence relating to the size and shape of vapes, please include it here. (Optional, maximum 500 words)*

**Regulation 38(3)(d) of the TRPRs currently only prohibits devices that resemble food or cosmetic products – Trading Standards feel this should be widened to any design that resembles a product other than an e-cigarette. There have been vapes designed to resemble other electronic items before (USB sticks etc) and a watch and one of the intentions behind these designs appears to be so that underage users can conceal the fact they possess a vape. There is no need for a legitimate product to look like anything other than what it is.**

**Similarly, in terms of the size, shape and design of vapes to appeal specifically to younger people some vape producers have used memes/trends to market their products. Products like “Prime Bar” (resembling a drinks bottle) emerged during the hype around Prime drinks a few years ago; the RandM “Squid Box” vapes used images from Squid Games on the box & vape itself when that show was at its most popular; and then there are more general products like the “Insta Bar” named to associate themselves with Instagram. Trading Standards feel that restricting the design of vapes will help to reduce the attractiveness to children.**

*Tank sizes*

*We are interested in evidence relating to vape tank sizes, including:*

- *the effectiveness of current limits (2ml for a device tank and 10ml for a refill tank)*
- *the optimal capacity for a vape tank*
- *the benefits and risks of connecting vape refill tanks to the device*
- *how many refill tanks should be connected to a device at one time*

*If you have any evidence on vape tank sizes, please include it here. (Optional, maximum 500 words)*

**Note there is no “refill tank” in the current regulations – the 10ml applies to “refill containers”. The fact that manufacturers are designing products where the 10ml refill container is attached post sale and acts as a tank may not have been anticipated. Trading Standards face continual questions regarding tank sizes. Legal departments look for assurance that anything more than 2ml for a tank and 10ml for a refill device is “unsafe” but there appears to be little factual basis for the limits in the first place. The current legislation allows for any number of refills to be attached after point of sale which appears to defeat the object of restricting liquid in the tank to 2ml and the refill container (which presumably was intended to refill the tank rather than act as a tank in itself) to 10ml. Trading Standards would like to see it clearly defined in regulations that even after the point of sale there should be a maximum of 2ml of liquid in a tank (or a tank capacity of 2ml) plus a maximum of 10ml in a refill container but only one refill container to be able to attach to the 2ml device at any one time. This total maximum of 12ml should apply at any point.**

**Trading Standards would also recommend that in the Regulations, 2ml should be written as 2.00ml and 10ml as 10.00ml – in the current Regulations, it is acceptable for a tank to have a capacity of 2.49ml or a pod to contain 2.49ml, or a refill container to contain 10.49ml of liquid due to rounding. This has caused some difficulties with assessing the compliance of the vape in practice.**

### *Digital screens*

*Please provide evidence on the role of digital screens on vapes. For example, whether there may be benefits or harms, and whether there is a need to place limits on the use of digital screens. (Optional, maximum 500 words)*

**A small screen which provides information on the volume of liquid and the amount of power remaining to enable the user to estimate when re-filling or re-charging will be required is appropriate. There is no necessity for games and apps to be linked to the vape as they may encourage longer use of the device and may also be attractive to children. We would also raise the issue of LED lights on vapes. Having LED lights that indicate things like battery level or liquid level serves a necessary function but some products (particularly some of the RandM “Tornado” products) produce a flashing display of multiple colours when someone inhales from the device. This serves no practical function whatsoever; appears to be designed solely to appeal to younger users and makes actually inhaling from the device attractive to very young children (who may do so repeatedly so they can watch the light display).**

### *Requirement to be child resistant*

*Please provide evidence on the effectiveness of child resistant measures on vapes. (Optional, maximum 500 words)*

**In the Tobacco Products Directive 2014/40/EU article 20 regulation 3 (g) states that e-cigarettes and refill containers should be child proof. When this was transposed into the Tobacco and Related Product Regulations 2016, the requirement became “child-resistant” in Regulation 37 (7)(a). As this BSI guide for consumers states, no container can be guaranteed as child proof so precautions should be taken. [Child resistant packaging. A consumer's guide to the standards for child resistant packaging](#) There is no definition in the TRPRs for child resistance although the implication in the BSI guidance is that there should be some sort of switch or action the user must take which is unlikely to be able to be carried out by a child. Trading Standards understands that refill containers are generally child resistant as they use the twist bottle tops to reduce access. However it is common to see devices which once they are out of the packaging can be used by a child. Industry sources say that in order to access the nicotine the child would have to inhale which is not something they are used to doing; however Trading Standards feels there should be a more robust system in place such as a switch or lock as in the Netherlands**

### *Any other evidence*

*Please provide evidence on other elements of a vape that the government should consider regulating and why. (Optional, maximum 500 words)*

**Recycling companies continually report the complexity of recycling vaping products is significantly increased by the wide range of different types of ingredients used including different types of plastic which need to be manually separated and analysed to be treated separately. More efficient recycling could be achieved by mandating the types of plastic and other materials used.**

### *Heated tobacco devices*

*We are interested in evidence relating to heated tobacco devices. In particular, we are interested in:*

- evidence relating to the size and shape of heated tobacco devices*

- *the role that digital screens should have in heated tobacco devices*
- *the effectiveness of child resistant measures on heated tobacco devices*

*Do you have evidence to provide on heated tobacco devices?*

- **Yes**
- No

*If you select 'no' you will go straight to the next section of the call for evidence on licensing.*

#### *Size and shape*

*We are interested in any evidence relating to the size and shape of heated tobacco devices, including:*

- *how different heated tobacco device sizes and/or shapes appeal to people*
- *the potential benefits of introducing maximum or minimum size limits*
- *the potential benefits of standardising size and/or shapes*

*If you have any evidence relating to the size and shape of heated tobacco devices, please include it here. (Optional, maximum 500 words)*

**Everything we have said in the section above on vape features applies to heated tobacco devices**

#### *Digital screens*

*Please provide evidence on the role of digital screens on heated tobacco devices. For example, whether there may be benefits or harms, and whether there is a need to place limits on the use of digital screens. (Optional, maximum 500 words)*

#### *Requirement to be child resistant*

*Please provide evidence on child resistant measures on heated tobacco devices and whether there would be a benefit to mandating specific child resistant measures. (Optional, maximum 500 words)*

#### *Any other evidence*

*Please provide evidence on other elements of a heated tobacco device that the government should consider regulating and why. (Optional, maximum 500 words)*

*If you have any other evidence on heated tobacco devices, please provide it here. (Optional, maximum 500 words)*

#### *Licensing*

*We are seeking evidence on the implementation of a licensing scheme. The feedback provided in this call for evidence will inform a subsequent consultation on the proposed design of the licensing scheme.*

*Do you have evidence or views to provide on retail licensing?*

- **Yes**
- No

If you select 'no' you will go straight to the section on product registration.

#### Licensing scheme objectives

We want to ensure that only responsible retailers who do not pose any undue public health or crime risk will be able to have a tobacco and vape licence and sell products to the public. So, we propose that the overarching objectives for the licensing scheme are to:

- protect public health - to ensure that retailers and their practices are not posing any undue or excessive risk to the health of the public
- prevent crime - to ensure that retailers do not pose any undue crime risk and that only law-abiding retailers can sell these products to the public

Do you agree or disagree with the proposed licensing scheme objectives?

- Agree
- Neither agree nor disagree
- Disagree
- Don't know

Please explain your answer. (Optional, maximum 500 words)

**Yes we agree to these objectives but would recommend the specific mention of protection of children either as an add on to these objectives or a specific third objective – “the protection of children from harm”**

#### Decision making

What factors should be taken into consideration when making decisions on the granting of a premises licence? In your answer you may want to consider factors such as the location and density of retailers and whether businesses are fixed or mobile, as well as any other factors you consider relevant. (Optional, maximum 500 words)

**Premises licenses should be only granted to retailers who demonstrate a commitment to the objectives of the licensing scheme. The permissive regime of the Licensing Act is not appropriate for tobacco, vapes and nicotine products and a license should be seen as a privilege, not a right. For anyone wishing to sell tobacco products, they should be able to demonstrate that they have the legal permission to purchase tobacco products through the Tobacco Track and Trace system with a valid Economic Operator Identifier**

What factors should be taken into consideration when making decisions on the granting of a personal licence? (Optional, maximum 500 words)

**Only individuals who can demonstrate they are a fit and proper person should be granted a personal license. Any convictions or warning letters issued about the sale of any illegal tobacco, vapes or nicotine products, or the sale of any products with an age restriction to children, or the breach of any offences related to the sale of tobacco vapes and nicotine products would bar an individual from applying for a personal license. The identity of the applicant should be verified and verifiable with specific contact details provided. Anyone applying for a personal license should declare whether they have been subject to a closure order at any point in the past (note there is no central record of closure orders but we would expect honesty in declaration to be part of the fit and proper person test). In addition to a DBS check, Trading Standards should check for any convictions/warnings/FPNs/FMPs on the Sanctions Information Database as well as on the Trading Standards national intelligence**

**database and Licensing Authorities Officers should ensure that no application is progressed until these checks have been carried out.**

*Should factors affecting decisions on the granting of licences be shaped by local priorities or nationally set criteria, or both? In your answer, please provide examples of criteria that you believe should be set at a national level and any criteria which should be left to local decision making. (Optional, maximum 500 words)*

**Both. Issues around suitability in terms of fit and proper person should be decided nationally – offending in one area should be a bar everywhere. Also conditions such as the use of CCTV, the requirement for an age verification system should be consistent across the country. However, decisions around local density could be left to local decision makers who have the knowledge about their own communities and what is suitable**

*How should licensing authorities reach decisions about whether to grant a licence? In your answer you may want to consider what structures (such as committees) are needed to make decisions, as well as the extent to which interested parties should be engaged in the process. Please explain your answer with reference to the operation of existing licensing schemes. (Optional, maximum 500 words)*

**This should follow the process in the Licensing Act 2003 whereby applications are submitted to the Licensing Authority who share with all interested parties. The Licensing Authority officers compile all of the representations from interested parties and make a report to the Licensing Committee (made up of elected members with delegated responsibility to consider the applications). This ensures that local politicians can make decisions based on both national and local considerations.**

*If there are any other factors that should be considered in the administration of the licensing scheme, please outline them here. In your answer, you may want to consider transparency of decision-making, requirements to publish information and the process for appealing decisions. (Optional, maximum 500 words)*

**We have proposed that any convictions or warning letters issued about the sale of any illegal tobacco, vapes or nicotine products, or the sale of any products with an age restriction to children, or the breach of any offences related to the sale of tobacco vapes and nicotine products would bar an individual from applying for a personal license. It is unlikely to be appropriate for Trading Standards knowledge about the background of an applicant to be shared publicly and therefore representations from Trading Standards should only be viewed by the Officers and Committee members making the decision and not published in any way**

*Licensing conditions*

*Please outline any examples of licensing conditions which you believe could be imposed on a premises licence to support the objectives of the scheme. (Optional, maximum 500 words)*

**Many mandatory conditions under the Licensing Act appear to be to do with complying with the law e.g. not selling alcohol below the cost of duty plus VAT. Mandatory conditions for the tobacco, vapes and nicotine licenses should start with a minimum requirement that ALL laws must be complied with (display, age of sale, promotion, environmental take back etc).**

*Please outline any examples of licensing conditions which you believe could be imposed on a personal licence to support the objectives of the scheme. (Optional, maximum 500 words)*

**Anyone applying for a personal licence should prove their suitability to hold such a license Also, applicants for personal licenses should be required to undertake a course which outlines the importance of complying with the law and the nature of the risks associated with selling tobacco, vapes and nicotine**

*Please provide your views on which licensing conditions could be determined by local councils, and which conditions should be mandatory for all licence holders. (Optional, maximum 500 words)*

**Nationally - there should be mandatory conditions for vape license holders in particular around the environmental regulations and the need to provide take-back of used products. As the tobacco age of sale will be increasing, Challenge 25 will not be appropriate for tobacco and cigarettes but there should be a requirement for an age verification system or process. Trading Standards would like to see a mandatory age verification system such as that included in the Tobacco and Primary Medical Services (Scotland) Act 2010 which is a legal requirement for any businesses selling tobacco or vape products and is a documented set of procedures that a retailer must follow. Failure to have a policy or follow it can result in warnings or fixed penalties or even prosecution. Provision of CCTV which is available to enforcement Officers could be a mandatory condition. Also, requirements for documentation such as proper tax invoices for supply of products, refusals logs, training registers – to be kept and available for enforcement officers to view on request should be mandatory nationally. Locally – opening times could be determined where there are concerns about children accessing products**

#### *Licensing fees*

*What is an appropriate fee structure for premises licences and why is this the case? In your answer, you may want to consider fees paid in existing schemes, and/or whether fees should vary depending on the type of retailer or other characteristics, such as the size of the business and the products they sell. (Optional, maximum 500 words)*

**License fees should take into account the harm caused by the different products. We recommend different licenses for tobacco products and vaping/nicotine products. If the same license covers both, this incentivises many retailers who currently operate as specialist vape shops – more than 3500 according to recent data - [Number of independent vape shops across UK jumps again | The Independent](#) – to also sell tobacco which they currently typically do not. The license fee for tobacco should be higher to try to discourage businesses from selling tobacco at all as smoking prevalence continues to fall.**

*What is an appropriate fee structure for personal licences and why is this the case? In your answer, you may want to consider fees paid in existing schemes. (Optional, maximum 500 words)*

*Please provide your views on whether fees should be set at a national or local level. In your answer, you may want to refer to the operation of existing schemes. (Optional, maximum 500 words)*

**Trading Standards believe strongly that fees should be set nationally with a mandated review period so they do not remain the same for several years as currently the case with alcohol. Alternatively (or in addition) the fees could be introduced subject to an RPI increase each year, mandated in the regulations. National fees reduces the amount of time spent in dealing with challenges locally. This would also facilitate the variation in license fees to take account of the harm caused by different products. It is likely that a tobacco license may take less time to administer for the local authority than a nicotine license but we would like the license fee to reflect the harm caused by the products rather than the hours incurred by the local authority.**

**The Tobacco and Vapes Bill allows for the license fee to be used for exercising functions in connection with the regulations (i.e. enforcement) as well as administration. In those areas where the licensing authority is not the same as the**

weights and measures authority, and the latter is exercising functions as well as the former, we would like to see it mandated that the fee is appropriately shared. Currently Trading Standards report this does not happen for alcohol.

#### *Duration and renewal of licences*

*How long should a licence be granted for? In your answer, please consider both personal and premises licences. (Optional, maximum 500 words)*

**Trading Standards recommend that a license be granted for 3 years. However it may be best to consider that variations could be required during that period and that license fees may need to reflect these – for example, extra visits may be required if legislation changes around displays**

*How should the renewal of licences be managed? Please consider the renewal of both personal and premises licences. You may also want to refer to the operation of existing schemes. (Optional, maximum 500 words)*

#### *Online sales licensing*

*How should a retail licensing scheme be administered for online retailers and compliance monitored? In your answer, you may want to consider whether the approach taken should differ from the approach for physical premises, and/or refer to the operation of existing schemes. (Optional, maximum 500 words)*

**An online retailer should have all of the conditions required for a retailer in physical premises plus extra conditions relating to their specific business. For example a trader must have a policy document in place and agreed with all delivery providers, to ensure that age of sale is checked at point of delivery as well as at point of sale. A copy of the agreed policy must be available for inspection by enforcement officers at any time as well as documentary evidence that they are testing the system, e.g. does the delivery firm actually ID on delivery, or does the online background check work**

#### *Exemptions from licensing*

*Please provide evidence of any exemptions which you believe are necessary as part of the retail licensing scheme. (Optional, maximum 500 words)*

**No exemptions should be available as part of the retail licensing scheme. Although a reduction in fee payable by businesses selling less harmful products than others may be appropriate, all businesses selling tobacco, vapes and nicotine products should have to prove their suitability and comply with conditions imposed and there is no good reason why there should be any exemption. If certain types of business are allowed to sell any of the products without a license, pretending to be that type of business will become yet another method of trying to evade enforcement attention by criminals**

#### *Implementing a licensing scheme*

*How can the licensing scheme be implemented effectively? In your answer, you may want to consider the application process for existing retailers during the implementation of the scheme and whether it should differ from applications after the scheme has been implemented. (Optional, maximum 500 words)*

*How long is required to implement the licensing scheme? In your answer, please consider the time required, following the introduction of regulations, to set up the scheme as well as the time required for applications to be processed. (Optional, maximum 500 words)*

*If there is anything else that should be considered in the implementation of the scheme, please outline it here. In your answer, you may want to consider any support retailers and*

local councils will require to effectively implement the scheme. (Optional, maximum 500 words)

**If the legislation allows for a licence to be transferred when a license holder sells their business, Trading Standards should be able to object to the transferee. Currently in the Licensing Act 2003, only the Police can object. We would also like to see a list of prohibited persons as in the Estate Agents Act - [Public Register of Orders - Powys County Council](#)**

#### *Impact of a licensing scheme*

*Please provide evidence of the impacts on retailers or any other businesses of implementing a licensing scheme. In your answer, you may want to consider any relevant evidence from the implementation of existing licensing schemes for other products and relevant international examples. (Optional, maximum 500 words)*

**Trading Standards believe that a licensing scheme will be of benefit to legitimate retailers and other legitimate actors in the supply chain. It may also discourage those who “dabble” in the market – we are aware of random premises such as florists, butchers, sweet shops, offering vapes where they do not have knowledge or experience of preventing underage sales.**

**However we would highlight that we do not think the licensing scheme will necessarily impact on the issue of criminals using illegal tobacco and vape sales to generate cash for criminal purposes. The majority of premises referred currently by Trading Standards to HMRC for Tobacco Track and Trace sanctions for example, do not have an EOID and have never applied for one despite the fact there is no cost. Criminals are unlikely to apply for a license to carry on their illegitimate businesses. However the retail licensing scheme will improve the compliance and transparency of generally legitimate businesses, leaving Trading Standards and other enforcement agencies to focus their limited resources on tackling the criminal enterprises**

*Please provide evidence of potential public health benefits as a result of implementing a licensing scheme. In your answer, you may want to consider any relevant evidence from the implementation of existing licensing schemes for other products and relevant international examples. (Optional, maximum 500 words)*

*Please provide any additional evidence or views on the development of a retail licensing scheme, providing a clear rationale for any views that you offer. (Optional, maximum 500 words)*

**We would like it to be quick and easy to remove a license from anyone selling illegal tobacco or illegal vapes. Selling illegal products without a license should then seamlessly lead to closure of the premises.**

#### *Product registration*

*We are clear that we need a different process to ensure that products are safe and comply with our regulations. This call for evidence seeks further detail on the existing notification schemes and where registration will go further than current notification requirements. We welcome views from interested parties on implementing such a scheme.*

*This will inform the development of policy proposals, which we will consult on in due course.*

*Please note that this section is not seeking evidence on the retail registers in Scotland and Northern Ireland.*

*Do you have evidence or views to provide on product registration?*

- Yes
- No

*If you select 'no' you will go straight to the end of the survey.*

*Please provide evidence on the effectiveness or ineffectiveness of the current notification system for tobacco and herbal smoking products. (Optional, maximum 500 words)*

**The current notification system for tobacco and herbal smoking products tends to be used by Trading Standards only to check the status of shisha or herbal smoking products. Status of tobacco and cigarettes and whether they can legally be offered for sale tends to be provided by the HMRC list. The current list appears to be rarely updated so Trading Standards cannot rely on it.**

*Please provide evidence on the effectiveness or ineffectiveness of the current notification system for nicotine vaping products. (Optional, maximum 500 words)*

**This definitely needs addressing - When we find products which are on the market legally i.e. they've been through the notification process and published by the MHRA, but are NOT compliant for a host of reasons, it is immensely difficult for MHRA to remove the notification. We will still seize the non-compliant products we find but there is often push back from retailers who say that they purchased the products in good faith and checked the MHRA notification portal first (which is what they are advised to do). The registration scheme must be aligned with the product requirements; there must be standard methodologies for all testing and standard formats for production and data files; the submitter to the registration scheme must be based in the UK even if the product is manufactured overseas so that Trading Standards can discuss issues when they arise and take enforcement action when necessary.**

*Please provide evidence of any product registration schemes and their advantages and disadvantages. These could be international or other UK government schemes. (Optional, maximum 500 words)*

#### *Products in scope*

*We are interested in evidence on the UK market for the following products, and any impacts of requiring registration of these products:*

- *nicotine products (including nicotine pouches, nicotine gum, nicotine strips and nicotine pearls)*
- *non-nicotine vaping products*
- *cigarette papers*
- *tobacco related devices (such as heated tobacco devices)*

*Evidence may include size of the market, pricing structures and information on consumer or market trends.*

*If you have any evidence on the market for the products in scope, please provide it here, specifying which product or products you are referring to. (Optional, maximum 500 words)*

*Please provide evidence of the supply chain for the products in scope. This includes how they are imported to the UK, who imports them and how they are distributed. (Optional, maximum 500 words)*

### Information requirements

The bill specifies that the regulations may require the following information as part of a product's registration:

- the reasons for an ingredient's inclusion in the product
- images (for example, an image of the product or its label or packaging)
- information relevant to any risks or suspected risks to human health or safety posed by the product
- information about substances released into the body of a person using the product or about the emissions released by the product
- information about the producer's operations
- information about any individual nominated by the producer in accordance with regulations under clause 97 (responsible person)

If there is any other information not listed above that should be required before a product can be registered, please outline it here and explain why this is the case. (Optional, maximum 500 words)

**For vaping products we should include a requirement to provide details of which Producer Compliance Scheme they have signed up to for recycling**

### Product standards and testing requirements

Please provide evidence on existing testing regimes and their effectiveness and any testing standards which are used in relation to the products in scope. (Optional, maximum 500 words)

**Currently there is no consistency across testing regimes used by various test labs. Emissions files provided to MHRA refer to various different units such as ug/puff and ng/mg as well as different testing methods such as GC-FID and ICP-MS which is confusing and makes comparison difficult. The regulations should specify what testing is required and how to carry out that testing.**

Please provide evidence on the most effective point in a product's route to market for testing to be conducted. For example, before registration. (Optional, maximum 500 words)

**Before registration is important and testing should be carried out at this point. However Trading Standards would also like to see funding built in to the system to enable random market surveillance testing of products on the shelves to see if the products supplied to consumers match those which are supplied for pre-registration testing.**

Please provide evidence on the business impacts of enhanced testing requirements for these products. (Optional, maximum 500 words)

### Responsible person

Please provide evidence of existing schemes where a 'responsible person' can be nominated to submit information on behalf of an organisation, and their effectiveness. Please also provide any information relating to rules around who is allowed to submit information. (Optional, maximum 500 words)

**To bring requirements in line with other safety legislation, there should be a requirement that each registration will require the name and physical address of a responsible person or other party who takes responsibility for the product to liaise with regulators in the U.K. They must be able to provide the documents required, within a reasonable time, should an issue occur, also to take responsibility for**

**recording any Yellow Card issues and taking recall action should a serious non-compliance be reported. The responsible person must be based in the UK.**

#### *Notification scheme fees*

*Under the existing notification schemes, producers or manufacturers must pay a fee or fees as part of the notification process. For tobacco products, these fees vary depending on the product. The fees for a cigarette are:*

- £200 for a new notification
- £200 for a substantial modification of an existing product
- an annual reporting fee of £100

*Cigarettes are also subject to a testing fee of £1,000, or £167 multiplied by the number of samples required in the period if there were 5 or fewer.*

*The Medicines and Healthcare products Regulatory Agency charges £150 for notification of a nicotine vape.*

*What fees should be charged for registration and testing of a product? You may refer to the fee regimes for the existing notification systems as a basis. Please provide rationale and any supporting evidence. (Optional, maximum 500 words)*

*Please provide evidence on the potential business impacts of requiring fees for registration of nicotine products and non-nicotine vaping products. (Optional, maximum 500 words)*

#### *Impact on businesses*

*Please provide evidence of the impacts on business (such as producers and importers) from adapting to new registration and reporting requirements as established through the Tobacco and Vapes Bill. (Optional, maximum 500 words)*

#### *Enforcement*

*How effective or ineffective is the current enforcement regime for ensuring that only notified products are sold in Great Britain and Northern Ireland? (Optional)*

- Very effective
- Somewhat effective
- **Somewhat ineffective**
- Very ineffective
- Don't know

*Please provide any evidence to support your view and any recommendations on how enforcement could be improved in the future. For example, on things like sale of unregistered products. (Optional, maximum 500 words)*

**It should be mandatory that registered products must comply with ALL regulation and be removed from the register if they are not. The offence of sale or supply of unregistered products should sit with the retailer as well as the producer (note only the producer can currently be prosecuted for non-notification of products)**

*Please provide evidence or views on eligibility criteria for registration, including criteria for cancellation or suspension of a registration. (Optional, maximum 500 words)*

*Please provide any additional evidence or views on future registration powers, providing a clear rationale for any views that you offer. (Optional, maximum 500 words)*

**Really important that future labelling requirements include a mandatory clause to ensure the registration number for that specific product appears on the packaging so enforcement Officers – as well as anyone in the supply chain – can quickly check a product's status without having to search by product name which are often very similar**