

UKVIA Response to Dutch Consultation on Restriction of Flavours in E-liquids for Electronic Cigarettes

About the UKVIA

The UK Vaping Industry Association (UKVIA) is a non-profit organisation, run by its membership: the UK's leading vaping businesses, as well as international firms active in the UK market. Our membership represents the majority of the UK industry by volume, supporting the 3.8m British vapers.¹

As the country's leading vaping trade body, the UKVIA supports evidence-based, proportionate regulation that clearly sets vaping apart from combustible cigarettes. We work with a range of partners to promote proven benefits of harm reduction.

We focus our efforts around five key strategic objectives:

- Highlighting the public health potential of vaping.
- Driving a highly responsible vaping industry.
- Ensuring fair and proportionate legislation and regulation.
- Putting right the misinformation around vaping which deters smokers making the switch.
- Promoting the economic and social impact of vaping.

Our vision is for a world where the evidence-based, life-changing public health benefits of vaping products are fully understood, so that their positive impact on public health can be maximised.

Introduction

This submission is in response to the draft decree amending The Tobacco and Tobacco Products Decree, in particular to the proposal to regulate the available flavours for electronic cigarettes and to only allow flavourings that are mainly found in tobacco flavours.

The UK Vaping Industry Association (UKVIA) strongly believes that adult smokers around the world should have access to less harmful alternatives to smoking such as electronic cigarettes. We fully support evidence-based, proportionate regulation that recognises the public health potential of vaping products and the life changing impact they can have on adult smokers quitting cigarettes.

¹ For more information visit www.ukvia.co.uk

We are strongly opposed to the proposal to restrict electronic cigarette flavours to tobacco flavours. Flavours play an important role in helping adult smokers switching from smoking to vaping. We believe that the proposal to severely restrict flavours could result in relapse to smoking amongst former smokers who currently use electronic cigarettes, fewer smokers switching completely to electronic cigarettes, and could result in current vapers using illicit products.

Research suggests that electronic cigarettes are an effective quitting aid. A major study published in the New England Journal of Medicine found that electronic cigarettes are almost twice as effective as nicotine replacement treatments at helping smokers to quit.² In the UK, vaping is now the most popular quit aid. Quit rates are on the increase, with the proportion of people who successfully quit smoking in England at its highest in more than a decade. Smoking prevalence in England is at an all-time low of 13.9%.³

The use of electronic cigarettes as a less harmful alternative to smoking

Cancer Research UK has said, ‘There is growing evidence that electronic cigarettes are an effective quitting tool’⁴ and a poll in 2019 also found that nearly two thirds of vapers (68%) said they never thought they would quit smoking until vaping came along.⁵

We know that a variety of flavours are utilised by smokers who initiate electronic cigarette use and that the trajectory of switching from combustible products to electronic cigarette use almost always involves the use of more than one flavour⁶. It’s often stated that quitting smoking is the primary reason to initiate vaping, but that flavours help smokers switch and stay switched away from cigarettes.

Electronic cigarette flavours are often broadly grouped into three categories: (1) tobacco; (2) menthol and (3) non-tobacco/menthol (NTM) flavours. Former smokers who have successfully substituted electronic cigarettes for combustible cigarettes report that flavour is a key product feature that distinguishes vaping products from combustible cigarettes, and that the availability of vaping products in non-tobacco flavourings helps smokers to transition away from combustible cigarettes. Further, studies suggest a ban on e-liquid flavours would likely drive some ex-smokers to combustible cigarettes and or use of black-market vaping products⁷.

² Queen Mary’s University, 2019 [Link](#)

³ UCL 2020 Smoking Toolkit

⁴ Cancer Research UK, 2018 [Link](#)

⁵ OnePoll, 2019 [Link](#)

⁶ Bentley, Guy. “A Question of Taste: The Public Health Case for E-cigarette Flavours.” Reason Foundation. November 2018. <https://reason.org/wpcontent/uploads/public-health-case-e-cigarette-flavours.pdf>

⁷ Buckell J, Marti J, Sindelar JL. Should flavours be banned in cigarettes and e-cigarettes? Evidence on adult smokers and recent quitters from a discrete choice experiment [published online ahead of print, 2018 May 28]. *Tob Control*. 2018; tobaccocontrol-2017-054165. doi:10.1136/tobaccocontrol-2017-054165

The trajectory of flavour use in electronic cigarettes is an important consideration. While smokers generally start using tobacco flavours in vaping products, over time, flavour preferences change to non-tobacco flavours, particularly fruit or sweet flavours.

The evidence that electronic cigarettes have a role in helping individuals give up smoking for good continues to grow:

- A study carried out in eight EU member countries, showed that the Netherlands had the best long-term quitting success rates for smokers using electronic cigarettes.⁸
- The most recent review by the Cochrane Collaboration considered the results of 50 studies in 15 countries and confirmed their earlier finding that electronic cigarettes help people quit smoking and that they are safe to use.⁹
- The Cochrane Database concluded electronic cigarettes to be 70% more effective in helping smokers quit than nicotine replacement therapy. For every 100 people using nicotine e-cigarettes to stop smoking, 10 might successfully stop, compared with only six of 100 people using nicotine-replacement therapy or nicotine-free e-cigarettes, or four of 100 people having no support or behavioural support only.¹⁰
- A 2019 study showed that as electronic cigarette use has increased in England, so too had the rate of successful quit attempts, as well as the overall number of quit attempts.¹¹
- A 2017 study covering all member states of the European Union concluded that electronic cigarette use in the EU was positively associated with having quit smoking. Former use of electronic cigarettes was also associated with having quit smoking.¹²
- Smoking prevalence among adults in England is at a record low of 13.9%¹³ and there has been an increase of nearly a quarter (22%) in quit attempts compared to 2019 and an increase of almost two-thirds in the quitting success rate from 14% to 23%, the highest since at least 2007¹⁴.
- A study using United States Population Assessment of Tobacco and Health (PATH) data found that use of Electronic Nicotine Delivery Systems (ENDS) due to the availability of appealing flavours was associated with lower odds of smoking relapse among former smokers¹⁵.

Notably the countries with the lowest smoking rates in Europe – Sweden (7%) and the UK (13.9%) have regulatory environments supportive of reduced-risk alternatives to cigarettes, for example, Sweden permits snus and, in the UK, Public Health England (PHE) has

⁸ Hummel, K. et al., 2018: Quitting activity and use of cessation assistance reported by smokers in eight European countries: Findings from the EUREST-PLUS ITC Europe Surveys

⁹ Hartmann-Boyce et al, 2020 [Link](#)

¹⁰ Cochrane Library, 2020: Electronic cigarettes for smoking cessation

¹¹ Beard et al, 2019 [Link](#)

¹² Farsalinos et al, 2017 [Link](#)

¹³ ONS, 2020 [Link](#)

¹⁴ UCL Smoking Toolkit Study, 2020 [Link](#)

¹⁵ Soule EK, Plunk AD, Harrell PT, Hayes RB, Edwards KC. Longitudinal analysis of associations between reasons for electronic cigarette use and change in smoking status among adults in the Population Assessment of Tobacco and Health Study. *Nicotine Tob Res.* 2019. doi:10.1093/ntr/ntz005

consistently advocated for the use of electronic cigarettes as part of an effective smoking cessation programme.

The European Commission's own figures state that 26% of EU citizens smoke and that they are at the most serious risk of disease and premature death – with 700,000 of them dying each year¹⁶. More than 29,000 deaths in the Netherlands per year are related to smoking.¹⁷

We commend the Commission and all Governments for the steps they are taking to reduce smoking prevalence. However, acknowledging the positive public health role that vaping products could play in a healthier Europe is fundamental to making any plan to reduce smoking a success.

Adults want and like flavours

We consider that any ban on flavours is likely to make vaping less attractive to adult smokers who might otherwise make the switch. In the UK, PHE found in 2020 that banning flavoured liquids would deter vapers from using vaping products to help them quit or reduce their smoking and that it could push them towards illicit products¹⁸.

There is a clear difference between flavour *profile* and flavour *branding*. Underage use of electronic cigarettes in the UK is very low. But nevertheless, as a UK trade body we have drawn up pre-emptive rules precisely to deal with the concern that certain kinds of products may be more attractive to youth. That is why the UKVIA has issued guidance to members that aims to strike the right balance between innovative and appealing products that support adult smokers in the transition to a less harmful alternative, whilst not appealing to anyone who does not already smoke or vape or anyone who is under 18.

These guidelines state that members must not use flavour names or descriptors that are particularly appealing to youth, or are associated with youth culture, including popular language or expressions, or names that are reminiscent of confectionary disproportionately appealing to children. Our guidance also bans all cartoons and youth-appealing iconography (e.g. superhero logos), as well as poison and sexual references, and has well-targeted rules on flavour naming conventions.

A survey by the Yale School of Public Health based on more than 17,000 respondents aged from 12 to 54 concluded that vaping non-tobacco-flavoured electronic cigarettes was not associated with increased youth smoking initiation. But it was associated with an increase in the odds of adult smoking cessation. E-liquids with flavours other than tobacco are not a

¹⁶ European Commission, 2020 [Link](#)

¹⁷ Tobacco Atlas on Netherlands, 2018

¹⁸ Public Health England, 2020 [Link](#)

gateway to youth uptake of smoking. No evidence substantiates an association between vaping flavours and subsequent smoking initiation.¹⁹

Further, an analysis of several UK studies by Public Health England involving over 60,000 minors showed: ‘young people are experimenting with electronic cigarettes, but regular use is rare. Meanwhile, smoking rates among young people in the UK continue to decline.’²⁰ There is a variety of reasons why young people experiment, and use, electronic cigarettes with the most frequent reason being ‘just to give it a try’ at 52.4%²¹.

Adult vapers like and want flavours. Research shows that smokers who switch to vaping typically start with tobacco flavours²² suggesting that they are using electronic cigarettes as a way of quitting smoking, rather than specifically to vape flavours. However, flavour preferences change over time migrating towards sweeter flavours.²³ A year-long study showed that when smokers who were initially given tobacco-flavour e-liquids could choose their own, approximately 60% chose non-tobacco or menthol flavours.²⁴

A 2013 report concluded ‘Flavours variability should be maintained; any potential future risk for youngsters being attracted to electronic cigarettes can be sufficiently minimized by strictly prohibiting electronic cigarette sales in this population group’²⁵ The UKVIA has developed its Preventing Underage Sales Guide²⁶ in partnership with Trading Standards²⁷ and commissions a robust bi-annual test purchasing scheme to support members to comply with minimum age laws.²⁸ Operating alongside the Association’s Code of Conduct, these are just two examples of decisive action being taken by the UKVIA in setting clear standards for the industry to adopt to safeguard consumers.

Electronic cigarettes are a gateway out of smoking

In the UK, PHE recently outlined that ‘evidence does not support the concern that electronic cigarettes are a route into smoking among young people’²⁹. In a report in 2017 it was stated that ‘surveys across the UK showed a consistent pattern: most electronic cigarette experimentation does not turn into regular use, and levels of regular use in young people who have never smoked remain very low.’³⁰ Of young people aged 11-18 years old who have never

¹⁹ Friedman, A.S. and X. SiQuin, 2020: Associations of Flavoured e-Cigarette Uptake With Subsequent Smoking Initiation and Cessation

²⁰ Public Health England (PHE), last updated 2020: Stoptober-Campaign

²¹ ASH, 2019 [Link](#)

²² Public Health England, 2015 [Link](#)

²³ Du et al, 2020 [Link](#)

²⁴ Hajek, 2019 [Link](#)

²⁵ Farsalinos et al, 2013 [Link](#)

²⁶ Appendix Four – UKVIA Preventing Underage Sales Guide

²⁷ Buckinghamshire and Surrey Trading Standards, Primary Authority Partnership [Link](#)

²⁸ Serve Legal, Test Purchasing Provider [Link](#)

²⁹ Public Health England, 2020 [Link](#)

³⁰ Bauld et al, 2017 [Link](#)



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smoked, 5.5% have ever tried electronic cigarettes, 0.8% are current vapers, only 0.1% vape more than once a week, and not a single never smoker reported vaping daily³¹.

Elsewhere, only 0.2% of electronic cigarette users in the Netherlands had never smoked prior to using an electronic cigarette,³² and a rise in vaping in the US has been accompanied by a reduction in smoking prevalence. For example, a National Institute of Health funded study showed that the increase in vaping in the US has not resulted in an increase in smoking but rather a sharp decline. It concluded that the first statistically significant increase in population smoking cessation in the US in nearly 25 years was associated with a substantial increase in the use of electronic cigarettes by US adults. This study, involving hundreds of thousands of participants, showed that electronic cigarettes increased smoking cessation across subgroups and concluded that it is remarkable that this is the kind of data pattern that was predicted but never achieved at the population level for NRTs or varenicline.³³

In a paper in 2017 on adolescents and electronic cigarettes, it was concluded that current studies do not show that 'electronic cigarettes are a substantial causal gateway to cigarettes.'³⁴

The Proposal

The current proposal is to create a positive list of flavouring ingredients registered for the Dutch market on 1 June 2020 that are relatively more common in tobacco flavours than in non-tobacco flavours, using data provided by producers in the EU-Common Entry Gate.

However, it is not possible to create a positive list in this way given flavour ingredients present below a certain level in the final formulation are considered to be trade secrets and are not notified but described collectively using an umbrella term. Moreover, creating a flavour involves complex processes, using a broad range of ingredients that can be combined in different ways to create different flavour profiles.

The process required to determine which ingredients should appear on a workable positive list would be extremely complex, time consuming and counterproductive – settling on an ingredients list that is too narrow would limit ingredients such that it would stifle innovation and the ability to create products, and likely have a detrimental impact on available products to those adult smokers considering the switch from smoking to vaping.

Unintended consequences

Unintended consequences must be considered prior to the implementation of broad product restrictions like flavour bans. It has been widely reported that current electronic

³¹ ASH, 2019 [Link](#)

³² Trimbos Instituut, 2019

³³ Zhu et al, 2017 [Link](#)

³⁴ Kozlowski et al, 2017 [Link](#)

cigarette users would be likely to go back to combustible use or employ do-it-yourself strategies to achieve their preferred flavours. Each of these consequences are dangerous and may be avoided with proper regulation of electronic cigarette manufacturers and legal enforcement against unlawful sales.

- About 50% of participants in one survey reported they would “find a way to buy my preferred flavour” or “add flavouring agents myself” if their preferred flavour was banned. Approximately 10% reported they would return to smoking traditional tobacco cigarettes if all non-tobacco flavours were banned³⁵.
- In addition, restriction of flavours in electronic cigarettes will likely slow displacement of combustible products as it may disincentivise smokers who have not yet tried reduced risk products from doing so.

In conclusion

We are strongly opposed to the proposal to restrict electronic cigarette flavours to tobacco flavours. Evidence shows that flavours play an important role in helping adult smokers switching from smoking to vaping, and flavour is a key product feature that distinguishes electronic cigarettes from combustible cigarettes. We are concerned with any plan that treats vaping products in the same way as conventional tobacco products, as this will likely be counter-productive for public health.

We therefore continue to call upon all Governments, including the Dutch Government, to recognise the role that vaping can play in providing adult smokers with a less harmful alternative to cigarette smoking. We urge the Dutch Government to ensure that the public health potential of vaping is fully realised, and that adult smokers and vapers have the right incentives, accurate information about and access to the harm reduction products they need.

³⁵ u P, Bascom R, Fan T, et al. Changes in Flavour Preference in a Cohort of Long-term Electronic Cigarette Users [published online ahead of print, 2020 Jan 24]. *Ann Am Thorac Soc.* 2020;10.1513/AnnalsATS.201906-472OC. doi:10.1513/AnnalsATS.201906-472OC