



Isle of Man
Government

Reillys Eilan Mannin

Vapour Products Bill 2023

Public consultation

Public Health

Cronk Coar, Noble's Hospital, Douglas, IM1 3AS

23rd December 2022

Vapour Products Bill 2023: Public Consultation

Overview

Vaping devices, commonly referred to as vapes or e-cigarettes, heat up a vaping liquid or gel to create a vapour that you can inhale. Vaping liquids typically contains nicotine, but may be used to deliver flavoured products or drugs such as cannabis or Spice (a synthetic drug similar to cannabis).

Evidence points to vaping being considerably safer than tobacco smoking for established smokers, and vaping is presently the number one method for adult smokers to quit, or temporarily abstain from smoking.

However, UK evidence¹ shows that 7% of 11 – 17 years olds in the UK occasionally or regularly vaped in 2022. While there is no Isle of Man specific data at present, the assumption is that young people use vaping devices and products on the Island to at least the same level as those in the UK given the Island's cultural and economic similarities.

We are seeing a rise in operational issues in schools and petty theft from shops in the Island, which is likely related to an increase in regular use of vaping products by young people. There are also public health concerns as to potential long term health risks of vaping by young people.

Officers in Public Health, the Office of Fair Trading (OFT), the Isle of Man Constabulary (IOMC), the Department of Education, Sport and Culture (DESC), the Department of Health and Social Care (DHSC) met to discuss these issues and how they may be resolved or mitigated.

Broader public concern led to questions being asked in the House of Keys² as to when legislation would be introduced to provide age controls on the sale of vapour products (i.e. vaping devices and vaping liquids and gels).

In responding, Hon. Kate-Lord Brennan (Minister for the Cabinet Office) gave a commitment that a Bill would be introduced into the House of Keys by Easter 2023. The Bill would introduce such age controls and, potentially, provide for controls on vapour products that are banned elsewhere.

Following engagement with retailers and other public bodies, as well as research into the similar UK legislation, Public Health directed the drafting of the Vapour Products Bill 2023 (the Bill).

The Bill has been drafted to –

- prohibit the sale or supply of vaping products and vaping devices to persons under 18 years of age;
- place controls on how vaping products and devices may be displayed at the point of sale;
- provide for regulatory standards for vaping products; and
- for the enforcement of the controls set out in the Bill.

Enforcement will be undertaken mainly by the OFT, in line with similar controls on tobacco. The Bill also provides for support for the Bill's enforcement by officers in the IOM Constabulary and Isle of Man Customs and Excise.

¹ <https://ash.org.uk/uploads/Use-of-e-cigarettes-among-young-people-in-Great-Britain-2022.pdf>

² [Questions 1.6 and 1.7 of the sitting of House of Keys of Tuesday 8th November 2022, Hansard K140, pages 95 to 98.](#)

As a consequence, the Bill is intended to –

- reduce the number of persons under the age of 18 that are using vapour products;
- reduce retail theft of vapour products;
- improve consumer safety standards, in line with standards in the UK and EU, for the benefit of adults using and consuming vapour products;
- mitigate against the long term risk to public health, on a precautionary principle basis, posed by vapour products in alignment with the approach taken in the UK.

The efficacy of this legislation will be monitored by Public Health via surveys undertaken before, and after, the legislation is brought into effect.

The purpose of this consultation is to gather views from the public on the regulatory controls proposed by the Bill, and to use those views to inform possible amendments to the Bill. The Bill, incorporating any amendments made following the consultation, will then be introduced for debate in the House of Keys and, subsequently, Legislative Council.

This consultation should take no longer than 15 minutes to complete. You are able to save your responses and complete this consultation at another time.

If you have any questions about this consultation, please contact either of the following officers in Public Health –

- Lauren Gray (Senior Health Improvement Officer), Tel.: 642693, Email: lauren.gray@gov.im
- Karl Cubbon (Policy Officer), Tel: 642615, Email: karl.cubbon4@gov.im

An early draft of the Bill is provided for consultation purposes. Drafting revisions may be made in light of this consultation, and / or the requirement for any further changes identified for legislative or policy purposes.

Why your views matter

By responding to this consultation, you have an opportunity to inform the Isle of Man Government's approach to regulating the sale and supply of vapour products.

How to respond

The deadline for responses is **23:59 on Sunday 29th January 2023**.

Responses should be made via the Online Survey link below or in writing to:

Lauren Gray, Senior Health Improvement Officer
Public Health, Cabinet Office,
Cronk Coar, Nobles Hospital
Strang, Douglas
Isle of Man, IM4 4RJ

When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation, please make it clear who the organisation represents and, where applicable, how the views of the members were assembled.

1. About you

Required information:

To understand who is submitting a response, and to mitigate against the submission of multiple responses by the same person or organisation, the following data is required for this survey.

- a. **What is your name?** *[Free text box]*
- b. **What is your email address?** *[Free text box]*
- c. **Are you responding on behalf of an organisation?** *[Free text box]*
- d. **Are you an Isle of Man resident?** *[Yes / No]*

Responses to consultations may be published, if we have your consent.

- e. **May we publish your response?** *[Yes, you can publish my response in full / Yes, you can publish my response anonymously / No, please do not publish my response]*

Voluntary information:

To aid Public Health's understanding of your consultation responses, and to gain some data on the prevalence of smoking and vaping on the Island, we would be grateful if you answered the following questions.

Responding to all of these questions is not mandatory, and these questions may be skipped if you wish to proceed with the remainder of the consultation survey.

- f. **Are you over 18 or under 18 years of age?** *[Over 18 / Under 18 / Prefer not to answer]*
- g. **Do you, or have you, smoked?** *[Smoked: today, in the last week, in the last month, in the last six months, in the last year, in the last 3 years, over 3 years ago, Never smoked, Prefer not to answer]*
- h. **Do you, or have you, vaped?** *[Vaped: today, in the last week, in the last month, in the last six months, in the last year, in the last 3 years, over 3 years ago, Never vaped, Prefer not to answer]*

Consultation questions on the Bill

2. Definition of vapour products (i.e. vaping devices and vaping products)

"Vapour products" (i.e. vaping products and vaping devices) may be defined as –

- (a) *a device which is intended to enable the inhalation of nicotine-containing vapour by an individual,*
- (b) *a device which is intended to enable the inhalation of other vapour by an individual but is intended to resemble and be operated in a similar way to a device within paragraph (a),*
- (c) *an item which is intended to form part of a device within paragraph (a) or (b),*
- (d) *a substance which is intended to be vaporised by a device within paragraph (a) or (b) (and any item containing such a substance).*

However, this definition would not apply to tobacco, or smoking related products (e.g. cigarette papers, filters or pipes).

A broad definition has been chosen to encompass the wide range of vaping devices and vaping products that are on the market, not just those relating to nicotine.

Recognising that vapour products may be used for legitimate purposes (e.g. to aid a person under 18 to stop smoking) the Bill also makes provision for this definition to not apply to medical devices and other types of products.

Finally, noting that technology and regulatory controls may develop in this area, the Bill also provides that these definitions, and the exceptions to these definitions, may be amended by Order.

Questions

- a. **Do you consider these definitions to be appropriate?** *[Yes / No]*
- b. **If No, how would you like to see these definitions amended?** *[Free text box]*

3. Prohibition of sale of vapour products to persons under the age of 18

The Bill prohibits the sale or supply, whether directly or indirectly, of vapour products to persons under the age of 18.

In support of this prohibition the Bill also bans the sale of vapour products from automatic machines (e.g. vending machines).

There is also proposed to be an exception to this prohibition to allow adult parents or guardians (i.e. responsible adults as defined in the Children and Young Persons Act 2001) to supply vapour products to their children. This exception is based on a similar exception, in relation to tobacco, provided by section 6(1C) of the [Children and Young Persons Act 1966](#).

Questions

- a. **Are you content with the proposed controls on the sale and supply of vapour products to persons under the age of 18?** *[Yes / No]*
- b. **If No, how would you like to see these controls amended?** *[Free text box]*

4. Controls on the display of vapour products

The Bill prohibits retailers from selling vapour products from anywhere other than a lockable cabinet (e.g. a glass display case) so these products cannot be directly accessed by customers.

However, the Bill does not require such products to be kept out of sight prior to sale, as is the case for tobacco products.

The intended effect of this control will be to ensure that vapour products are not easily accessed by consumers in shops, mitigating the risk of these products being shoplifted.

Exceptions and defences to this offence will be provided to, for example, allow for business to business sales and the re-stocking of display units.

Questions

- a. **Are you content with the proposed controls on how vapour products may be sold in retail premises?** *[Yes / No]*
- b. **If No, how would you like to see these controls amended?** *[Free text box]*

5. Regulatory standards for vapour products

Broad consumer safety standards may be applied to vapour products. However, there are no specific standards for such products set out in Manx law, unlike in the UK and the rest of Europe.

While the majority of the products sold on the Island are supplied from the UK, there is a risk of unsafe vaping devices or vaping products being sold to the public, especially if those products are imported into the Island.

The Bill enables the Department to apply UK standards on the manufacture and marketing of vapour to the Isle of Man, such as those set out in the [Tobacco and Related Products Regulations 2016](#).

This will ensure vaping devices meet specified safety standards for construction (e.g. on battery sizes, charging and temperature) and that vaping products are safe to consume.

Before any legislation is made as a consequence of the Bill, the Department must undertake a consultation with the Department of Health and Social Care, which has an interest in this matter from its related remit in regulating medicines.

The Department must also consult any persons who may be affected by the proposed legislation. Such persons will likely include retailers selling vapour products, and the Office of Fair Trading in its likely role of enforcing any such legislation.

Questions

- a. **Are you content with the proposed powers to apply UK legislation?** *[Yes / No]*
- b. **If No to either (or both) of the above, what changes would you like to see made?** *[Free text box]*

6. Enforcement of the Bill's proposed regulatory controls

While retailers are supportive of these proposed controls, enforcement powers are necessary to ensure continued compliance with the controls proposed by the Bill.

The Bill provides the Office of Fair Trading (OFT) with the powers necessary to enforce this legislation, noting OFT has similar enforcement powers already in relation to controls on the sale of tobacco.

These powers, would, for example, enable OFT inspectors to make test purchases, to enter premises and seize goods and related documents, and to issue prohibition notices to prevent the sale of unsafe or sub-standard vaping devices or vaping products.

The Bill also enables the Post Office and IoM Customs and Excise Officers to undertake enforcement actions to prevent vaping devices or vaping products, which are either unsafe

or reasonably suspected of being provided to persons under the age of 18, from being imported into the Island from the UK or elsewhere.

In addition, the Bill provides officers in the Isle of Man Constabulary with enforcement powers to support the operation of the Bill. These are anticipated to be used mainly in relation to offences of proxy purchasing, where an adult buys vaping devices or vaping products on behalf of a person under the age of 18.

The Isle of Man Constabulary will also have the power to seize vaping devices or vaping products being used by persons under 18 years of age in public places, noting similar powers are already provided in relation to tobacco and alcohol.

Questions

- a. **Are you content with the enforcement powers proposed in the Bill?** *[Yes / No]*
- b. **If No, what changes to the proposed enforcement powers would you like made?** *[Free text box]*

7. Future voluntary and regulatory controls

The Bill has developed at short notice in response to concerns about the safety of vapour products, and whether or not such products should be used by persons under the age of 18.

The Bill is accordingly focussed on regulating the sale and supply of vapour products for these purposes.

Public Health are planning to work with retailers to develop further voluntary controls on the sale of vapour products (e.g. how such products may be advertised, and the types of products that may be sold)

Public Health are planning a broader Public Health (Regulation) Bill, which may act as a vehicle for further controls on vapour products.

Questions

What additional voluntary or regulatory controls on vaping devices or vaping products, if any, do you think should be considered? *[Free text box]*

8. Any other comments

This consultation survey is intended to gain feedback on an overview of the proposed controls set out in the Bill.

Questions

Do you have any other queries, concerns or feedback on the Bill as whole? *[Free text box]*