

New Nicotine Alliance Vape Duty Consultation Response

The New Nicotine Alliance is a registered charity and consumer association representing current and future consumers of low-risk alternatives to cigarettes, such as vaping and nicotine pouches. We confirm no conflicts of interest concerning the tobacco, nicotine, or pharmaceutical industries. Many of us have experienced first-hand the benefits of vaping and other low-risk products to escape smoking. We also count public health experts among our board members, associates, and supporters. We welcome the opportunity to respond to the government's vape duty proposals.

5. Do you agree that the rates and structure outlined in Chapter 3 will achieve the stated objectives of the duty?

We believe that the proposed tax structure and rates will be extremely damaging to public health. It is clear that the proposals have been designed without a full understanding of nicotine, vaping, or vape devices. As such, the stated objectives of the duty are deeply flawed.

For example, the government wishes to “*reduce the number of non-smokers and young people that vape.*” The proposed duty will have that effect, but it will also increase smoking as a result. The science is clear on this.

Numerous studies have found that increased taxes on e-cigarettes reduces e-cigarette use but leads to significant increases in smoking. A 2021 working paper in the National Bureau of Economic Research (NBER) found that “*e-cigarettes are elastic goods and their use substantially reduces cigarette sales.*”¹ One of the authors, Michael F. Pesko researched several studies to simulate the effect of a proposal for a United States national vaping product tax and found that it “*would cause 2.7 million more adult daily smokers, 530,000 more teen smokers, and 29,000 more prenatal smokers.*”²

Similar research comes to the same conclusion. A recent 2023 study in the *Tobacco Control Journal* found that a 10% increase in e-cigarette taxes (the UK Chancellor is proposing increases of between 48% and 143%) reduces e-cigarette sales by 0.5% and increases cigarette sales by 0.1%.³ Furthermore, research by Yale School of Public Health and Georgia State University in 2022 into young adult responses to taxes on cigarettes and vapes in U.S. jurisdictions concluded that for every \$1 increase in e-cigarette taxes, daily e-cigarette use reduced by 2.5 percentage points amongst young adults but daily cigarette use increased by 2.5 percentage points.⁴

Therefore, the proposed duty will lead to consequences which directly defeat the government's stated objective to “*ensure the introduction of the duty does not make smoking more attractive.*”

The government also states that it wishes to “*encourage consumers to choose lower strength or nicotine-free vaping products over higher strength ones*” and “*encourage manufacturers of vaping products to reduce the nicotine content of their products.*”

This displays a fundamental misunderstanding of nicotine and how vaping works. As experts on e-cigarette research at London South Bank University commented last month, “[*t*]he proposal to add duty to e-liquid according to nicotine strength is ill-conceived, not based on the scientific evidence, and could cause more harm than good.”⁵ This is because vape use amongst consumers is not homogenous across varying nicotine levels. Those who consume low nicotine e-liquid almost uniquely do so with high powered devices which vapourises liquid at a far faster rate. Likewise, higher nicotine consumption is by way of low power devices which use far lower volumes of liquid. Ironically, it is consumers of lower nicotine liquids who will be financially punished the most as they use twice as much, or more, e-liquid than higher strength users.

Rather than encouraging consumers to choose lower strength nicotine, the proposed rates will drive consumers towards higher strength liquid to reduce the impact of the tax.

There is also a complete lack of joined up thinking in the government spending tax receipts on encouraging smokers to quit by handing out one million free vapes with the Stop to Swap scheme⁶, only to then disincentivise those who take up the offer by applying heavy duties to the liquids they need to actually use them. The proposed taxation on higher strength liquids would penalise newly switched smokers, who require higher strength liquids to make the switch to lower-risk products, by more than doubling the cost of an average 10ml bottle of 18mg/ml liquid.

It is also worth noting that a majority of those responding to the government’s call for evidence on creating a smokefree generation and tackling youth vaping did not believe that “*an increase in the price of vapes would reduce the number of young people who vape.*”⁷

Table 45: percentage of those responding as individuals by where they live in the UK

| Response | England | Wales | Scotland | Northern Ireland | UK |
|-------------------|----------------|--------------|-----------------|-------------------------|-----------|
| Yes | 40.2 | 28.8 | 42.7 | 60.8 | 41.1 |
| No | 52.5 | 65.5 | 49.1 | 31.1 | 51.5 |
| Don’t know | 7.3 | 5.7 | 8.2 | 8 | 7.4 |

6. Do you agree that the rates and structure will encourage manufacturers to reduce the nicotine content of their products?

As set out in question 5, there will be no incentive for users of high nicotine liquid to switch to low nicotine products because consumers of low nicotine liquids use far higher volumes and will therefore pay more tax, even taking into account the lower rate of duty. Also, the way high and low strength liquids are vaped is significantly different. Consumers of lower strength nicotine liquid vape high wattage direct to lung (DTL) devices whereas higher strengths are vaped on low powered mouth to lung devices (MTL). Lower strength liquid is favoured by those seeking a highly flavoursome experience, whereas higher strength users prioritise the nicotine “throat hit” which they enjoyed when they smoked cigarettes, but which detracts somewhat from the full flavour of the liquid.

These are two separate sets of vapers who mostly stick with the devices which they favour, so manufacturers will continue to cater for both groups. Some do try to taper down their nicotine level over time, but most do not. This is because most recognise that nicotine is not the harmful element in combustible tobacco, but instead the thousands of toxins created once a cigarette is lit. The government has completely misunderstood this.

7. What do you think the likely impact the rate structure will have on consumers’ vaping behaviours?

Europe-wide consumer association, European Tobacco Harm Reduction Advocates (ETHRA), surveyed consumers across the continent in 2020 on what they would do if a high tax on vaping was applied⁸. The proposed UK duty can certainly be described as a “high tax on vaping” considering it more than doubles the price of 10ml bottles of liquid of a strength higher than 11mg/ml. It would also mean that a 50ml bottle of branded non-nicotine e-liquid will cost more than a packet of cigarettes. Overall, we estimate that the proposed vape duty would cost consumers an average of over £1,000 extra per year to quit smoking.

Of the more than a thousand who responded to the survey from the UK, nearly 80% said that, in the event of a high tax being applied, they would probably (13.5%) or be very likely (65.9%) to search for a black or grey market source to find vape products. More worryingly, nearly 30% said they would probably (13.0%) or be very likely (19.9%) to restart smoking or to smoke more.

Very small increases in smoking prevalence arising from the proposed tax would far exceed any revenue aspirations the Chancellor might have envisaged. The Impact Assessment for the Tobacco and Vapes Bill assumed the value associated with a quality adjusted life year (QALY) at £70,000. Based on this assumption, each 0.1 percentage point increase in smoking prevalence would represent a cost of £3.5 billion⁹.

8. Should production of vaping products by individuals for their own use be within scope of the duty?

Absolutely not. It is difficult to envisage any way that HMRC could enforce this without unacceptable levels of intrusion into individuals' lives. Furthermore, there is no tax applied on people who make homemade beer or sugary drinks (which attract commercial duty), nor should there on those who mix their own vape liquid.

58. Do you believe the introduction of the new duty would lead to consumers switching to alternative nicotine containing products?

As referred to in question 7, the government should be concerned that the new duty will undoubtedly drive vapers back to smoking, especially if they are new switchers. It will also deter people who currently smoke to switch to vaping instead.

In his Budget speech introducing the duty, Jeremy Hunt claimed that: *“Because vapes can also play a positive role in helping people quit smoking, we will introduce a one-off increase in tobacco duty at the same time to maintain the financial incentive to choose vaping over smoking.”*

He has done nothing of the sort. The public consultation document released alongside the budget announcement states that users of stronger liquids (≥ 11 mg/ml) will face a 143% price increase. Weaker liquids (< 11 mg/ml) will go up by 98%, and nicotine-free liquids by 48%.¹⁰

The increase in combustible tobacco duty, by comparison, is around 2.5%. To put that into context, as a result of the budget, a 20 per day smoker will take 21 days to pay the extra duty that a standard vaper using 20mg/ml liquid will pay in 7 days. The Chancellor's proposals will considerably *reduce* the financial differential between smoking and vaping.

59. Unless already covered in your responses to other questions within this document, is there anything else you would like us to note about the impact of the duty?

Many proposals in the Treasury's discussion paper would protect the cigarette trade and favour the tobacco industry.

The assessment of vaping policies is largely the assessment of unintended consequences. These are likely because cigarettes and vapes function as *economic substitutes*. It follows that regulatory restrictions or taxes on one may increase the demand for the other.

The full range of potential unintended consequences is large and includes adverse behaviour change (not quitting smoking, taking up smoking instead of vaping, relapse to

smoking) and access to illicitly made or imported products (as a buyer or potentially as a seller).

The government seems preoccupied by what the nicotine liquid equivalent of a cigarette is, whereas it is irrelevant how much nicotine a vape contains compared with nicotine in a cigarette because the products are completely different. Nicotine is not the element that causes the death and disease, it is the combustion. As Action on Smoking and Health explains, *“puffs on vapes ARE NOT equivalent to puffs on cigarettes.”*¹¹

The government seems overly concerned about nicotine addiction, without any appreciation that it is an entirely different thing to harm. Even if that is the case, the proposal to tax non-nicotine products which, by definition, cannot be addictive makes no sense at all.

The Chancellor’s insistence that *“vapes can also play a positive role in helping people quit smoking”* is shown to be hollow when he intends to erect the greatest financial barrier to the products which can most effectively play that positive role.¹² This, after the government has also vowed to ban single use vapes which have led to the most significant declines in smoking prevalence ever seen in this country, and despite pleas from public health organisations not to do so.

We note, too, that many public health organisations are not in favour of the proposed tax. For example, the ASH/Fresh Balance response to the government’s call for evidence on creating a smokefree generation and tackling youth vaping recommended that an excise tax on refillable/rechargeable vaping options should be zero-rated.

The proposals will significantly damage an important harm reduction option and potentially lead to high costs in net additional smoking. The NNA, along with public health authorities, is deeply worried that the public is increasingly misinformed about vaping. The latest ASH survey found that *“[t]his year has seen public understanding [about the relative safety of vaping compared to smoking] plunge to an all-time low, with half of all adults (50%) and more than half (58%) of 11-17-year-olds believing vaping is as bad for health, or worse, than smoking.”* Hazel Cheeseman, ASH Deputy Director, observed that *“The evidence has grown that vaping is less harmful than smoking, but public understanding has gone in the other direction.”*¹³

Far from correcting such misperceptions, the imposition of the proposed vape duty will only reinforce them.

The only result of the vape duty proposals will be a significant deterrent to smokers who are considering switching to vaping, an increase in sales of illicit products, and relapse by many back to smoking cigarettes. By implementing this suite of duty rates, the government is ensuring that the Smokefree 2030 target will not be achieved.

¹ Chad D. Cotti et al., “The Effects of E-Cigarette Taxes on E-Cigarette Prices and Tobacco Product Sales: Evidence from Retail Panel Data,” National Bureau of Economic Research, April 2021, <https://www.nber.org/papers/w26724>

² Michael F. Pesko, Twitter, November 3, 2021, <https://twitter.com/mikepesko/status/1456097441334321156>

³ Diaz MC, Donovan E, Tauras J, Stephens D, Schillo B, Phillips S, Chaloupka FJ, Pesko M. Effect of e-cigarette taxes on e-cigarette and cigarette retail prices and sales, USA, 2014-2019. *Tob Control*. 2023 Jul 21;tc-2022-057743. doi: 10.1136/tc-2022-057743. Epub ahead of print. PMID: 37479474.

⁴ Friedman AS, Pesko MF. Young adult responses to taxes on cigarettes and electronic nicotine delivery systems. *Addiction*. 2022 Dec;117(12):3121-3128. doi: 10.1111/add.16002. Epub 2022 Jul 29. PMID: 35852452; PMCID: PMC9796020.

⁵ New high nicotine vaping tax could drive riskier habits, London South bank University, April 2024. <https://www.lsbu.ac.uk/about-us/news/new-high-nicotine-vaping-tax-could-drive-riskier-habits>

⁶ Smokers urged to swap cigarettes for vapes in world first scheme, Department of Health and Social Care, 11 April 2023. <https://www.gov.uk/government/news/smokers-urged-to-swap-cigarettes-for-vapes-in-world-first-scheme>

⁷ Creating a smokefree generation and tackling youth vaping consultation: government response Annex 1: breakdown of responses by location. 12 February 2024. <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#annex-1-breakdown-of-responses-by-location>

⁸ ETHRA: Online EU Nicotine Users Survey report, June 2021. <https://ethra.co/eu-survey>

⁹ The Tobacco and Vapes Bill IA uses a value per Quality Adjusted Life Year (QALY) of £70,000 and assumes that each smoker who quits (and by implication reverts or does not quit) generates a cost or benefit of 1.0 QALY [see para. 413]. The ONS estimates 6.4 million smokers and a smoking prevalence of 12.9% in the UK [source]. A 0.1 percentage point change in prevalence from 12.9% to 13.0% equates to an additional 49,612 smokers. Multiplying this by £70,000 gives £3,473 million. For each 0.1% change in the number of smokers (not a percentage points change of prevalence), the cost would be £448 million. These calculations are to illustrate the magnitude of costs associated with small changes in population smoking rates that might arise from vaping legislation.

¹⁰ Vaping Products Duty consultation document, March 2024. https://assets.publishing.service.gov.uk/media/65e80ba108eef600115a5621/Vaping_Products_Duty_Consultation.pdf

¹¹ ASH brief for local authorities on youth vaping August 2022. <https://ash.org.uk/uploads/ASH-brief-for-local-authorities-on-youth-vaping.pdf>

¹² Latest Cochrane Review finds high certainty evidence that nicotine e-cigarettes are more effective than traditional nicotine-replacement therapy (NRT) in helping people quit smoking. November 17, 2022. <https://www.cochrane.org/news/latest-cochrane-review-finds-high-certainty-evidence-nicotine-e-cigarettes-are-more-effective>

¹³ ASH: New figures show youth vaping has plateaued while adult vaping is at an all-time high, May 14, 2024. <https://ash.org.uk/media-centre/news/press-releases/new-figures-show-youth-vaping-has-plateaued-while-adult-vaping-is-at-an-all-time-high>