



Alexandra Connell  
SCOTSS Chair  
Trading Standards Manager  
Protective Services  
East Lothian Council  
John Muir House  
Haddington EH41 3HA

E-Mail: [REDACTED]

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Edward Mountain MSP  
Convenor  
Net Zero, Energy and Transport Committee  
c/o Clerk to the Committee  
Room T3.40  
The Scottish Parliament  
Edinburgh  
EH99 1SP

By email to: [netzero.committee@parliament.scot](mailto:netzero.committee@parliament.scot)

Dear Edward Mountain,

**The Environmental Protection (Single-use Vapes) (Scotland) Regulations 2024.**

The Society of Chief Officers of Trading Standards in Scotland is a Scottish Charitable Incorporated Organisation (SC047951) and is the professional body representing the heads of service for all 31 trading standards services in Scottish local authorities.

Thank you for this opportunity to provide further comment on these regulations to the Committee. If implemented effectively, these regulations could be a significant step towards reducing the environmental harm caused by single use vapes in Scotland. However, in their current form, we are of the opinion that enforcement would be difficult, and there is a risk that the aims of the Scottish Government would not be met.

SCOTSS was amongst the first to recognise the environmental harm caused by disposable vapes, highlighting this in our Disposable Vaping Products Report (<https://www.scotss.org/press/vapeproject2022.pdf>), in February 2022.

The first point we would make is that the enforcement of these regulations should be a statutory duty placed on local authorities to ensure consistent application across Scotland. If it is not, some councils may take the decision not to proactively enforce them.

There are variations in the analogous regulations published by the devolved administrations which we believe will cause confusion amongst businesses and consumers alike. We believe that closer alignment with the regulations across the UK would be more beneficial and effective in reducing the environmental harm caused by single-use disposable vapes. This alignment would strengthen the regulations and ensure a unified approach to environmental protection.

While we support the regulations' overall objectives, we have identified several areas where they could be strengthened to ensure consistent and effective enforcement across Scotland.

Our feedback to your specific questions is provided overleaf, and I hope our comments are helpful, but please do not hesitate to contact me or our National Coordinator, Ken Daly [REDACTED] if you require further clarification.

SCOTSS has no direct nor indirect links to the vaping or tobacco industry.

Yours faithfully

Alex Connell  
Chair SCOTSS

The Society of Chief Officers of Trading Standards in Scotland (SCOTSS), is a Scottish Charitable Incorporated Organisation (SC047951). Our members are professional trading standards managers representing every Scottish local authority trading standards service.

## 1. Supply and Sale Ban

Do you agree that the supply and sale of single use vapes in Scotland should be banned? If not, do you favour an alternative approach?

*Yes, we strongly advocate for a complete ban on the supply and sale of single-use vapes in Scotland. These products contribute significantly to environmental pollution due to improper disposal and short lifespans. Banning them will not only help mitigate their negative impact on the environment but also stimulate further environmental innovation in the industry, an outcome we fully support.*

## 2. Implementation Timescale

What do you think about the timescale for implementing this ban?

*The proposed implementation date of 1 April 2025 provides sufficient time for businesses and consumers to adjust to the new regulations. It also allows for a transition period during which public awareness campaigns can be conducted to educate about the ban and promote reusable alternatives. We are also of the view that the changes to the regulations set out below can be made within this timeframe.*

## 3. Definition of Single-Use Vapes

Do you agree with this definition, and are there any potential loopholes or unintended consequences?

*The definition of a "single-use" vape as any vape that is not refillable or rechargeable or does not have a replaceable coil is clear and appropriate, as it also includes "limited use" vapes within the definition of "single-use." However, a potential loophole exists if the supply of dedicated consumables such as pods containing coils, refill containers, and replaceable coils are not available. If replacement components are not available at the same point of supply as the single-use vape itself, these vapes will effectively become single-use.*

*Many major brands of disposable vapes have already adapted their products to pod based devices to comply with the new proposals. However, replacement pods are rarely sold alongside the original vape, and there is a risk that consumers will continue to use these as disposable devices if they cannot readily purchase coils or pods.*

## 4. Penalties for Offences

Do you think these penalties are proportionate?

*The penalties for the primary offences seem proportionate to the potential environmental harm caused by single-use vapes. However, we would draw the following points to your attention.*

*Relying solely on criminal prosecutions in Scotland may delay the effectiveness of any enforcement action. We would advocate the introduction of a Fixed Penalty Regime similar to that set out in the Tobacco and Primary Medical Services (Scotland) Act 2010, Schedule 1 (<https://www.legislation.gov.uk/asp/2010/3/schedule/1>).*

*As an alternative to prosecution, this would be similar to, but not an exact duplicate of, the civil sanction regime set out in the draft Environmental Protection (Single-use Vapes) (England) Regulations 2024.*

*Finally, as the regulations are currently drafted, enforcement officers will have to return any illegal vapes seized as evidence to the business from whom they were seized, because the regulations do not include any provisions for forfeiture at court. We would suggest including the forfeiture provisions in section 17 of the Consumer Protection Act 1987 as this will allow local authorities to apply to a sheriff to order the permanent removal of seized illegal vapes from the market place. Also, the courts should be allowed by the regulations to hear and approve applications from local authorities to recoup disposal costs for illegal vapes to be paid by the business from whom they were seized.*

## 5. Enforcement Powers

What do you think of these powers from the perspective of local authorities and businesses?

*In our opinion, the enforcement powers set out in these regulations are restrictive and impractical. They will significantly limit any enforcement activity by local authorities in Scotland.*

*There are several examples of powers exercised by local authority enforcement officers, which we believe would be suitable for the regulation of single use vapes required here. We would direct you to the powers set out in the Fireworks and Pyrotechnic Articles (Scotland) Act 2022 and the Consumer Rights Act 2015, Schedule 5, as effective examples of regulatory powers.*

*We also outline below the draft powers we believe need to be re-examined and amended if the single use vape ban is to be enforced effectively.*

- *The definition of ‘premises’: there does not appear to be a definition of premises in these regulations. The term first appears in regulation 9(1)(a) but not in regulation 2 – interpretation. We would suggest using the definition found in section 35 of the Tobacco and Primary Medical Services (Scotland) Act 2010.*
- *Entry and Inspection powers: the current draft requires ‘reasonable cause to believe’ an offence has been committed before an enforcement officer can enter business premises. This is a very high bar in terms of evidential requirement and effectively curtails enforcement completely. If it is Parliament’s intention that local authority enforcement officers should take proactive steps to engage with businesses to assess and advise on compliance, then there must be a right for enforcement officers to enter business premises and to inspect the vaping devices they have available for supply. If, on the other hand, the intention is reactive enforcement only, for example when a complaint is received, then limit these powers by requiring ‘suspicion of an offence’, which a complaint would provide.*
- *Seizure of documents from business premises: as currently drafted, officers can only seize documents from business premises under a Sheriff’s warrant. This is in contrast to a vape*

*(or vapes) which can be seized by the officer where they have reason to believe the vape is illegal.*

- *Seizure of vapes from business premises: we would suggest that in paragraph 9(1)(g), the words ‘...take possession of it and retain it...’ are replaced with ‘seize’. This gives clarity and consistency with the rest of these sections and avoids confusion over exactly what these powers mean.*
- *Test Purchasing: Whilst the power to test purchase from business premises is included in the regulations, there is not the power to test purchase from a dwelling. Officers are increasing finding vapes being sold online by persons/businesses operating from their homes.*
- *Vaping businesses being operated from a dwelling: as currently drafted, the regulations only allow officers entering under warrant to exercise the powers set out in regulation 9(1)(h). This is unnecessarily restrictive and means that an officer cannot exercise the other powers set out in regulation 9(1) such as investigation, examination, and seizure of illegal vapes.*
- *Sample Definition: the regulations need to be clear on what is meant by a ‘sample’. Does this mean, for example, a single device or a set number of devices proportionate to the whole consignment found? Clarity is required to avoid legal challenge.*
- *Other persons who should be able to accompany an enforcement officer: as drafted, an enforcement officer can only be accompanied by another enforcement officer. This is restrictive as an officer may require to be accompanied by, for example, a trainee officer, or an Environmental Health Officer who is not authorised under these regulations. The regulations should allow an enforcement officer to take with them any person who they think is reasonably necessary for the purpose of the inspection.*
- *Police Assistance: as currently drafted, the regulations only allow the presence of a police constable if there is a need to ‘...apprehend any serious obstruction...’. This is unnecessarily restrictive.*
- *Lockfast Containers: Introduce a power to break open lockfast containers. This is to deal with situations where officers find vapes in locked cabinets and hidden storage compartments. Officers require the power to access these where the business owner cannot or will not open the containers.*
- *Enable information to be obtained from third parties as part of any investigation by an Enforcement Officer. Currently, there is no power to require a third party such as a bank or a wholesaler to produce information which an enforcement officer reasonably requires as evidence.*

## 6. Enforceability and Challenges

What do you think about the enforceability of the regulations, potential vital challenges in this area, and whether lessons can be drawn from comparable regions, such as the single-use plastics ban?

*These regulations do not impose a statutory duty to enforce upon local authorities meaning they have the option not to do so. This could lead to inconsistency of enforcement across Scotland.*

*Lessons from the single use plastics ban are not comparable. The market for illegal vapes is significantly different. Any ban of single use vapes is likely, in our opinion, to lead to the creation of a black market in these devices which the ban on single use plastic did not.*

*One challenge we will face is that of supplies of illegal single use vapes after the ban comes into place. The regulations must be robust enough to allow local authorities to deal with sales from locations other than retail premises such as sales from dwellings.*

*Finally, we would suggest changes to Regulation 5 – ‘Failure to comply with an enforcement requirement’. These offences of obstructing and failing to provide reasonable assistance to officers are necessary for effective enforcement as they provide for criminal liability for those who would deliberately impede officers in the execution of their duties. In our view Regulation 5 does not go far enough in setting out what these offences are and the consequential penalties. We would suggest the obstruction provisions set out in section 42 of the Fireworks and Pyrotechnic Articles (Scotland) Act 2022 are used instead.*

## 7. Policy Objectives and Supportive Measures

Are these regulations sufficient to meet these objectives, and are any supportive measures needed?

*The regulations could meet the objectives set by Ministers if the changes outlined above are adopted. In addition, supportive measures such as public awareness campaigns, recycling advice and provision, and advice for vape businesses are, in our view, essential to maximising their effectiveness.*

*We understand the purpose of these regulations is to reduce environmental harm. However, the public perception is that from day one, all disposables will disappear, and that there will be a dramatic reduction in youth vaping. If true, this necessitates the need for clear and unambiguous messaging from the Scottish Government.*

*Finally, if these regulations are going to have the desired impact, it is crucial that the Scottish Government provides adequate resources to local authorities to ensure uniform and robust enforcement.*

## 8. Risks of Illegal Sales

What are the risks of increasing illegal sales of single-use vapes, and how can those risks be mitigated?

*We would highlight the fact that there is already a substantial illegal market for disposable vapes. The retail industry reports [<https://www.tradingstandards.uk/media/3178685/ctsi-statement-on-vapes-1.pdf>] that an estimated one-third of the total number of vapes sold is illegal, and this may increase in the face of a ban. To mitigate this risk, the government must enhance cross-border coordination to prevent illegal product movement, in Scotland primarily through the Port of Cairnryan, where intelligence indicates that substantial quantities of vapes are entering unchecked via Northern Ireland and the EU from China. This can only be stopped*

*if significant resources are provided to trading standards for inspection and investigation and, where necessary, seizure, storage, and disposal.*

## 9. Impact Assessments

Views on the identified financial, business, environmental, and equality impacts or other comments on the impact assessments.

*The impact assessments highlight significant benefits regarding environmental protection. Supporting businesses during the transition period can mitigate financial and business impacts. Equality impacts should be monitored to ensure the ban does not disproportionately affect vulnerable groups. The assessments do not adequately address the resource implications for local authorities.*

## 10. Alignment and Cross-Border Implications

Do you have any views or concerns about alignment or cross-border implications?

*Clearly the alignment of analogous regulations brought in by the other devolved administrations would lead to a uniform enforcement regime which consumers and businesses would find easier to understand and work with. Harmonising these regulations across the UK will enhance their overall effectiveness and ensure a uniform approach to environmental protection. Addressing our suggested amendments to strengthen the powers within the regulations will ensure effective enforcement and achieve the intended environmental protection goals.*